

**EXHIBIT A**

Illinois Action Complaint

FILED  
10/10/2018 4:46 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH12683

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CHANCERY DIVISION**

COMMUNITY UNIT SCHOOL DISTRICT 300, )  
an Illinois school district, )

Plaintiff, )

v. )

VILLAGE OF HOFFMAN ESTATES, )  
an Illinois municipal corporation; and SEARS )  
HOLDINGS CORPORATION, )  
a Delaware corporation, )

Defendants. )

2018CH12683

**VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF**

NOW COMES the Plaintiff, Community Unit School District 300 (“District”), by and through its attorneys the Law Office of Kory Atkinson and Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., and for the District’s Verified Complaint for Declaratory, Injunctive and Other Relief, hereby alleges as follows:

**PARTIES**

1. The Village of Hoffman Estates (“Village”) is an Illinois municipal corporation located primarily in Cook County, Illinois. The Village’s principal address is 1900 Hassell Road, Hoffman Estates, Illinois. The Village has a mayor and a six member board of trustees that is elected at large.

2. Defendant Sears Holdings Corporation is incorporated in Delaware. Its headquarters is located in the Village at 3333 Beverly Road, Hoffman Estates, Illinois. The predecessor of Sears was Sears, Roebuck & Co., which was a New York corporation. Unless

otherwise noted, Sears Holdings Corporation and its predecessor Sears, Roebuck & Co. are referred to as “Sears.”

3. Community Unit School District 300 (“District”) is an Illinois school district with its administrative offices located at 2550 Harnish Drive, Algonquin, Illinois. The District has an enrollment of over 21,000 students at nineteen elementary schools, seven middle schools and five high schools. The headquarters of Sears is located entirely within the boundaries of District 300.

### **BACKGROUND**

4. In 1989, as part of generous efforts to keep Sears from moving out of the State of Illinois as Sears was threatening to do, a law was passed known as the Economic Development Area and Tax Increment Allocation Act, 20 ILCS 620/1 et seq. (the “Sears EDA Act”), which was designed to specifically incentivize Sears to relocate its headquarters from downtown Chicago to undeveloped farmland in the Village.

5. In 1990, the Village and Sears entered into an Economic Development Agreement pursuant to the Sears EDA Act. Among other things, the 1990 Agreement provided considerable financial assistance and subsidies for Sears to develop its corporate campus in the Village. The 1990 Agreement enabled Sears to recapture a large portion of the property taxes paid on its corporate campus to cover the cost incurred for development of its corporate campus. A copy of the 1990 Economic Development Agreement is attached hereto and incorporated herein as Exhibit 1.

6. The term of the 1990 Agreement was structured to last for a 23 period, the maximum length of time such an agreement could be under the Sears EDA Act.

7. Under the 1990 Agreement, the definition of “Developer” was “Sears, Roebuck and Co., a New York corporation.”

8. Under the 1990 Agreement, millions of taxpayer dollars, much of which would have gone to the District, were instead diverted to Sears. In exchange, Sears agreed, among other things, to create or maintain a minimum number of jobs and cause a specific amount of private investment to occur in the designated project area.

9. For two decades following the 1990 Agreement, the District saw millions of tax dollars diverted to Sears, while Sears and the Village assured the District that when the 1990 Agreement under the Sears EDA Act expired in 2012 the District would experience substantial benefits with Sears’ property in the Village fully back on the tax rolls. Those assurances never materialized.

10. Instead, in 2011 when Sears was about to lose EDA Act subsidies, Sears again started scaring lawmakers with the possibility of large scale job losses in the area by threatening to move its headquarters out of Illinois. Sears sought a new package of subsidies in exchange for staying put in the Village.

11. In 2012, faced with the threats by Sears to move out of state and the loss of thousands of jobs and economic activity that would entail, Illinois legislators passed an amendment to the Sears EDA Act that effectively extended the 1990 Agreement, but included certain provisions about the amount of subsidies for Sears and the manner in which subsidies would be distributed.

12. Also included in the 2012 Amendments to the Sears EDA Act was a requirement that Sears create or retain not less than 4,250 full-time equivalent jobs at its headquarters in the

Village, and provisions providing for recapture of subsidies received by Sears in the event Sears fails to live up to the jobs requirement.

13. In the event that Sears fails to live up to the requirement that it create and/or maintain 4,250 jobs, the 2012 Amendments provide a formula for recapture of the subsidies based on the amount of time that Sears failed to comply with the jobs requirement.

14. In addition to receiving subsidies under the Sears EDA Act, part of the package Illinois put together in the 2011-2012 timeframe to keep Sears in state included incentives under an Act titled the Economic Development for a Growing Economy Tax Credit Act (the “EDGE Act”), 35 ILCS 10/5-1.

15. The EDGE Act is administered by the State of Illinois Department of Commerce and Economic Opportunity (“Department of Commerce”).

16. Pursuant to the EDGE Act, Sears and the Department of Commerce entered into an agreement on October 26, 2012 called the EDGE Tax Credit Agreement (the “EDGE Agreement”).

17. The EDGE Agreement required Sears to, among other things, create and/or maintain at least 4,250 jobs at its locations in the Village and in downtown Chicago, and the EDGE Agreement required Sears to submit documentation showing satisfaction of the jobs requirement.

#### **SEARS FAILS TO COMPLY WITH JOBS REQUIREMENTS**

18. In March of 2017 Sears submitted requests to the Department of Commerce for Sears’ 2016 tax subsidies, but with Sears having recently announced plans to lay off over 100 corporate employees, the Department of Commerce began questioning whether Sears was in compliance with the jobs requirement under the EDGE Agreement.

19. The Department of Commerce asked Sears to demonstrate that it complied with the jobs requirement in the EDGE Agreement. Sears responded telling the Department of Commerce that Sears had satisfied the jobs requirement.

20. Nevertheless, shortly after Sears' assurances that it satisfied the jobs requirement in the EDGE Agreement, media reports surfaced where Sears acknowledged that, in fact, it did not satisfy the jobs requirement of the EDGE Agreement. For a June 12, 2017 *Crain's Chicago Business* article entitled "With layoffs, Sears loses state tax credits," Sears spokesman Howard Riefs wrote that "For the first time since our agreement was enacted in 2011, we recently dropped below the required retained job figure for the Edge credit.." A copy of the article is attached hereto as Exhibit 2.

21. In June 2017 the Department of Commerce told Sears that the EDGE Agreement was suspended, and Sears thereafter threatened legal action.

22. With litigation a real possibility, Sears and the Department of Commerce entered into an agreement titled "Settlement Agreement Regarding EDGE Tax Credit Agreement" (the "Settlement Agreement") a copy of which is attached hereto as Exhibit 3.

23. In the Settlement Agreement, Sears admits falling short of the jobs requirement at least as of May 31, 2017 and admits that it continued to fall short of the jobs requirement at least through December 15, 2017, the date of the Settlement Agreement.

24. Around the same time that Sears was admitting to the Department of Commerce that it failed to live up to the jobs requirement in the EDGE Agreement, Sears was telling a totally different story to the Village.

25. In a November 27, 2017 correspondence to the Village Manager from Jonathan Bredemeier, who is Senior Director of Real Estate and Corporate Services at Sears, Sears told

the Village that “as of the date of this letter, over 4,250 jobs exist at the Sears Holdings’ campus in Hoffman Estates.” Mr. Bredemeier continued stating that “at no time in 2017 did the number of jobs dip below the requisite 4250 jobs.” A copy of the November 27, 2017 correspondence is attached hereto as Exhibit 4.

26. Copied on the November 27, 2017 correspondence was the Corporation Counsel and Assistant Corporation Counsel for Sears.

27. The November 27, 2017 correspondence provided no documentation or other evidence to corroborate the unverified claims that “over 4250 jobs exist at the Sears Holdings’ campus” and that “at no time in 2017 did the number of jobs dip below the requisite 4250 jobs.”

28. Based on information and belief, other than annual letters to the Village similar to the November 27, 2017 letter of Mr. Bredemeier, Sears provides no information to the Village analyzing and demonstrating that it satisfies the jobs requirement in the Sears EDA Act.

29. Despite the claims of Mr. Bredemeier, media reports from 2017 and early 2018 indicate that Sears was hemorrhaging hundreds of jobs at its corporate headquarters in the Village.

30. Media reports on January 31, 2018, indicated that Sears laid off 220 employees at its corporate headquarters in the Village. See CNBC article attached hereto as Exhibit 5.

31. Thus, Sears currently fails to maintain 4,250 jobs as required by the Sears EDA Act and has failed to maintain the requisite number of jobs since at least May 31, 2017.

32. Given the millions of dollars that the District has had to forgo in order to subsidize Sears and keep Sears from taking thousands of corporate jobs out of state, the District was justifiably alarmed by reports that Sears was cutting hundreds of jobs and failing to comply with Sears’ obligations with the State of Illinois under the EDGE Agreement.

33. On July 30, 2018, the District wrote to Jonathan Bredemeier at Sears. The District stated that it was concerned about the proper administration of the Sears EDA Act given that millions of property tax dollars are diverted from schools and other local governments based on the promise that Sears will maintain 4,250 jobs at its headquarters. A copy of the July 30, 2018 correspondence from the District is attached hereto as Exhibit 6.

34. The District's correspondence requested, quite reasonably, that Sears provide corroborating evidence to support its assertion that it maintained 4,250 jobs during calendar year 2017.

35. Additionally, the District asked for a commitment from Sears that Sears provide corroborating evidence in support of any assertion as to the number of jobs maintained during 2018 prior to any distribution of funds under the Sears EDA Act for 2018.

36. In closing, the District emphasized that it welcomed open communication with Sears about the administration of the Sears EDA Act.

37. The District never received a response from Mr. Bredemeier or from anyone else at Sears. Sears never engaged with the District on the important issues raised and certainly never took up the District's request for open communication. Instead, on August 24, 2018, the District received a response from one of Sears' outside property tax attorneys David Martin.

38. Concerning the District's request for corroborating evidence from Sears and to engage in open and constructive communication with Sears, Mr. Martin's terse letter states that "Sears has no obligation to provide School District 300 with any information regarding 'jobs' within the EDA. Sears has not provided this information to School District 300 in the past and sees no reason to begin doing so now." A copy of the August 24, 2018 correspondence is attached hereto as Exhibit 7.



### **COUNT I – DECLARATORY JUDGMENT**

39. The District restates paragraphs 1 through 38 for Count I as though fully set forth in this paragraph.

40. For three decades Sears' headquarters in the Village has been located in an economic development project area and has been the subject of an economic development plan pursuant to the Sears EDA Act.

41. The Sears EDA Act, as amended in 2012 by Public Act 97-636, requires Sears to create or retain not less than 4,250 full-time equivalent jobs at its corporate headquarters in the Village.

42. Pursuant to the Sears EDA Act, Sears receives subsidies in the form of millions of dollars in property tax rebates. Property taxes that Sears receives are diverted from the District and other taxing districts that levy taxes on the Sears property. The loss of the property tax revenue has and continues to negatively impact the District's ability to educate the students in the District including but not limited to hiring sufficient staff, adequately funding student programs and properly maintaining District facilities.

43. Beginning at least May 31, 2017 and continuing to date, Sears has failed to maintain the requisite 4,250 jobs at its corporate campus in the Village.

44. So important was the jobs requirement in the Sears EDA Act that when the law was amended in 2012 in an effort to keep Sears from leaving Illinois, a new section 4.5, 20 ILCS 620/4.5 titled "Recapture" was added and subsection b of section 4.5 specifically provides what happens in the event Sears maintains some but not all of the required jobs.

45. Section 4.5(b) of the Sears EDA Act specifically provides as follows:

(b) In the event the developer fails to maintain 4,250 jobs at any time before the termination of the economic development project area....the developer shall forfeit an amount of its allocations from the special tax allocation fund for that time period in which the developer failed to maintain 4,250 jobs. The amount forfeited shall equal the percentage of the year that the developer failed to maintain 4,250 jobs multiplied by the amount the developer would have received if they maintained 4,250 jobs for the entire year. Any funds that are forfeited shall be distributed to the taxing districts in the same manner and proportion as the most recent distribution by the county collector to those taxing districts (inclusive of the municipality) in the economic development project area.

46. Thus, the District has a legal tangible interest in this matter because a forfeiture of Sears per Section 4.5(b) results in a distribution of the forfeited amount to the taxing districts, including the District.

47. For 2017, Sears failed to maintain the requisite number of jobs from at least May 31, 2017 to December 31, 2017. In other words, for at least 59% of calendar year 2017, Sears failed to maintain the requisite number of jobs per the Sears EDA Act.

48. Accordingly, 59% of the amount that Sears received or would have received if Sears had maintained 4,250 jobs for the entire calendar year of 2017 should be deemed forfeited and distributed to the taxing districts in the same manner and proportion as the most recent distribution of the Cook County Treasurer.

49. To date in 2018, Sears has failed to maintain the requisite number of jobs required by the Sears EDA Act. In other words, for 100% of calendar year 2018 to date, Sears has failed to maintain the requisite number of jobs per the Sears EDA Act.

50. Accordingly, 100% of the amount that Sears would have received if Sears had maintained 4,250 jobs for the entire calendar year of 2018 should be deemed forfeited and distributed to the taxing districts in the same manner and proportion as the most recent distribution of the Cook County Treasurer.

51. The District has prepared worksheet calculations of the amount forfeited by Sears and payable to the taxing districts and is prepared to provide said calculations to the court along with supporting documentation.

52. The Village is a defendant in this matter because it receives tax monies in a special fund under the Sears EDA Act called the “special tax allocation fund.” Subsidies to Sears under the Sears EDA Act are paid from the special tax allocation fund in the amounts pursuant to 20 ILCS 620/4(g).

53. Among the relief sought by the District is injunctive relief preventing any further distributions to by the Village from the Village’s special tax allocation fund until the rights of the parties are declared by this court.

54. Any orders entered concerning forfeiture of amounts by Sears and changed distributions will necessarily affect the Village’s administration of the special tax allocation fund and the Village is therefore named as a defendant.

WHEREFORE, the District, prays that this Court enter an order:

- A. Declaring that Sears has failed to maintain the number of jobs required of it under the Sears EDA Act;
- B. Declaring that at least 59% of the amount that Sears received or would have received if Sears had maintained 4,250 jobs for the entire calendar year of 2017 should be deemed forfeited and distributed to the taxing districts in the same manner and proportion as the most recent distribution of the Cook County Treasurer;
- C. Declaring that 100% of the amount that Sears would have received if Sears had maintained 4,250 jobs for the entire calendar year of 2018 to date should be deemed forfeited and distributed to the taxing districts in the same manner and proportion as the most recent distribution of the Cook County Treasurer;
- D. Declare the specific amounts forfeited by Sears and the specific amounts payable to the taxing districts;

- E. Enter an order requiring Sears to repay any amounts disbursed to Sears that should not have been paid as a result of Sears failing to comply with the jobs requirement of the Sears EDA Act;
- F. Enter an injunction as to the Village of Hoffman Estates preventing any further distributions by the Village from the Village's special tax allocation fund until the rights of the parties are declared by this court;
- G. Retain jurisdiction over this matter for the purpose of enforcing the provisions of its judgment or decree; and
- H. Granting any other relief that this Court deems appropriate.

Respectfully submitted,

COMMUNITY UNIT SCHOOL DISTRICT 300

By: /s/ Kenneth M. Florey  
One of its Attorneys


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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

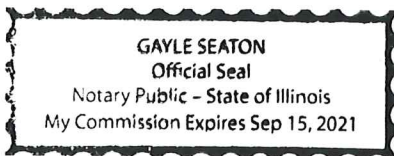
VERIFICATION

Susan Harkin, being first duly sworn on oath, hereby deposes and states that she is the Chief Operating Officer for Community Unit School District 300, that she has read the foregoing Verified Complaint for Declaratory, Injunctive and Other Relief, and that the facts contained therein are true and accurate to the best of her knowledge and belief.

  
\_\_\_\_\_  
Susan Harkin  
Chief Operating Officer

SUBSCRIBED AND SWORN TO  
BEFORE ME THIS 10 DAY OF  
October, 2018

  
\_\_\_\_\_  
Notary Public



2018CH12683

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**ECONOMIC DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE VILLAGE OF HOFFMAN ESTATES**

**AND**

**SEARS, ROEBUCK AND CO.**

**EXHIBIT**

**1**

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ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT is made by and entered into on the \_\_\_\_ day of \_\_\_\_\_, 1990, by and between the VILLAGE OF HOFFMAN ESTATES, an Illinois home rule municipal corporation located in Cook and Kane Counties, Illinois, and SEARS, ROEBUCK AND CO., a New York corporation.

DEFINITIONS

The following words and terms used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning:

**ACQUISITION CONTRACTS** The sale/purchase contracts which have been executed by Developer, or Developer's nominee, that provide for the Developer's acquisition of the Subject Property. A summary of the Acquisition Contracts is attached hereto as Exhibit "A".

**ACT** The Economic Development Area Tax Increment Allocation Act, Ill.Rev.Stat. (1989) Ch.67 1/2,SS1001 et seq., as amended from time to time.

**AGREEMENT** This Economic Development Agreement and all exhibits attached hereto, as the same may be amended from time to time by the Parties in accordance with the terms hereof.

**ALLOCATED TAX INCREMENT REVENUE AMOUNTS** The amounts of Tax Increment Revenues which are to be paid to the Village and the other Taxing Districts, consisting of the "Phase I Allocated Tax Increment Revenue Amounts" set forth on Exhibit "B" attached hereto, and the "Phase II Allocated Tax Increment Revenue Amounts," as determined by using the percentages set forth on Exhibit "C" attached hereto.

**AMENDMENT TO THE ANNEXATION AGREEMENTS** Such amendment to the Beverly Annexation Agreement and the Nederlander Annexation Agreement as the Parties may execute in order to further the development of the Subject

02/27/90-H.E.

44 Property. The Amendment to the Annexation  
45 Agreements may also constitute the annexation  
46 agreement for the portion of the Subject  
47 Property that is commonly described as the  
48 "Studz Parcel".  
49  
50 **BEVERLY** That certain annexation agreement dated  
51 **ANNEXATION** January 19, 1981 and approved by the Village  
52 **AGREEMENT** by Village Ordinance No. 1248-1981, as  
53 amended.  
54  
55 **BOARD OF TRUSTEES** The Board of Trustees of the Village holding  
56 office from time to time.  
57  
58 **BONDS** The Revenue Bonds and the General Obligation  
59 Bonds.  
60  
61 **CORPORATE** The President and Board of Trustees of the  
62 **AUTHORITIES** Village holding office from time to time.  
63  
64 **DEPARTMENT** The State's Department of Commerce and  
65 Community Affairs.  
66  
67 **DESIGNATED** The Village Manager of the Village holding  
68 **OFFICER** office from time to time.  
69  
70 **DEVELOPER** Sears, Roebuck and Co., a New York  
71 corporation.  
72  
73 **DEVELOPER** The advances made to or on behalf of the  
74 **ADVANCES** Village by the Developer in order to pay  
75 Project Costs, which advances shall be  
76 reimbursed to the Developer by the Village, in  
77 accordance with the provisions of this  
78 Agreement and the Act.  
79  
80 **DEVELOPMENT** The Phase I Development and Phase II  
81 Development.  
82  
83 **ECONOMIC** The economic development plan dated August 4,  
84 **DEVELOPMENT** 1989, entitled "Hoffman Estates Economic  
85 **PLAN** Development Project Area Plan and Project"  
86 which constitutes the comprehensive program of  
87 the Village for the Project Area, as approved  
88 by the Corporate Authorities by Village  
89 Ordinance No. 2106-1989, adopted on September  
90 11, 1989, together with any amendments  
91 thereto.  
92  
93 **ECONOMIC** The economic development project approved by  
94 **DEVELOPMENT** the Corporate Authorities by Village Ordinance  
95 **PROJECT** No. 2106-1989, adopted on September 11, 1989,

02/27/90-H.E.

96 in furtherance of the objectives of the  
97 Economic Development Plan.  
98  
99 **FUND** The Special Tax Allocation Fund.  
100  
101 **GENERAL** Those general obligation bonds which the  
102 **OBLIGATION** Village may issue pursuant to the terms of  
103 **BONDS** this Agreement.  
104  
105 **NEDERLANDER** That certain annexation and development  
106 **ANNEXATION** agreement dated August 22, 1978 and approved  
107 **AGREEMENT** by the Village by Village Ordinance No. 1039-  
108 1978, as amended.  
109  
110 **NOTE(S)** The economic development project tax increment  
111 revenue note(s) authorized to be issued by the  
112 Village pursuant to the terms of this  
113 Agreement, including Notes to evidence  
114 Developer Advances, Notes to evidence  
115 obligations to reimburse private financing  
116 costs and Notes evidencing obligations to any  
117 credit enhancers.  
118  
119 **OBLIGATIONS** The Bonds, the Notes, special service area  
120 bonds and any other instrument evidencing the  
121 obligation of the Village to pay money in  
122 furtherance of the Economic Development Plan  
123 and the development of the Subject Property  
124 (including, without limitation, bonds, notes,  
125 installment or financing contracts,  
126 certificates, tax anticipation warrants or  
127 notes, vouchers, and any other evidence of  
128 indebtedness).  
129  
130 **PCMT PROPERTY** The real estate upon which the Poplar Creek  
131 Music Theater is situated. The PCMT Property  
132 is legally described on Exhibit "C" to the  
133 Nederlander Annexation Agreement.  
134  
135 **PARTIES** The Village and the Developer.  
136  
137 **PHASE I** That development occurring during the life of  
138 **DEVELOPMENT** the Economic Development Project either within  
139 or outside the boundaries of the Project Area  
140 (including, without limitation, site  
141 preparation, the construction of buildings,  
142 structures, utility installations, roadways  
143 and other improvements) which is undertaken  
144 on, in connection with, or in furtherance of  
145 the use, occupancy and development of the  
146 Phase I Site.  
147

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148	<b>PHASE II</b>	That development occurring during the life of the Economic Development Project either within or outside the boundaries of the Project Area (including, without limitation, site preparation, the construction of buildings, structures, utility installations, roadways and other improvements) which is undertaken on, in connection with, or in furtherance of the use, occupancy and development of the Phase II Site.
149	<b>DEVELOPMENT</b>	
150		
151		
152		
153		
154		
155		
156		
157		
158		
159	<b>PHASE I SITE</b>	That portion of the Subject Property, consisting of approximately two hundred (200) acres, which is located in the northwest corner of the Subject Property. The Phase I Site is legally described on Exhibit "D" attached hereto.
160		
161		
162		
163		
164		
165		
166	<b>PHASE II SITE</b>	The Subject Property, exclusive of the Phase I Site. The Phase II Site consists of approximately five hundred eighty-eight (588) acres and includes the PCMT Property. The Phase II Site is legally described on Exhibit "E" attached hereto.
167		
168		
169		
170		
171		
172		
173	<b>PHASE I TAX</b>	The ad valorem taxes levied upon taxable real property within the Phase I Site by any and all Taxing Districts having the power to tax real property in the Phase I Site, which taxes are attributable to the increase in the then current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the Phase I Site over and above the initial equalized assessed value of each such lot, block, tract or parcel of real property.
174	<b>INCREMENT</b>	
175	<b>REVENUES</b>	
176		
177		
178		
179		
180		
181		
182		
183		
184		
185	<b>PHASE I TAX</b>	The date on which the Phase I Tax Increment Revenues received and deposited in the Fund reflect a full year's assessment of the SMG Home Office Complex.
186	<b>INCREMENT</b>	
187	<b>REVENUE</b>	
188	<b>COMMENCEMENT</b>	
189	<b>DATE</b>	
190		
191	<b>PHASE II TAX</b>	The ad valorem taxes levied upon taxable real property within the Phase II Site by any and all Taxing Districts having the power to tax real property in the Phase II Site, which taxes are attributable to the increase in the then current equalized assessed valuation of each taxable lot, block, tract or parcel of real property in the Phase II Site over and above the initial equalized assessed value of
192	<b>INCREMENT</b>	
193	<b>REVENUES</b>	
194		
195		
196		
197		
198		
199		

each such lot, block, tract or parcel of real property.

**PROJECT AREA**

The Hoffman Estates Economic Development Project Area, which is legally and commonly described on Exhibit "F" attached hereto, and pictorially depicted on Exhibit "G" attached hereto, as heretofore established by the Corporate Authorities by Village Ordinance No. 2107-1989, adopted September 11, 1989, and as certified by the Department on October 6, 1989.

**PROJECT COSTS**

The reasonable or necessary costs incurred by the Village incidental to the Economic Development Project. Project Costs shall include, without limitation, "economic development project costs", as defined in the Act as of the date of this Agreement, and the following:

- (a) Costs of studies, surveys, development of plans and specifications, implementation and administration of the Economic Development Plan, including, but not limited to, personnel and professional service costs for architectural, engineering, legal, marketing, financial, planning, police, fire, public works or other services, provided, however, that no charges for professional services may be based on a percentage of the incremental tax revenues;
- (b) Property assembly costs within the Project Area, including, but not limited to, acquisition of land and other real or personal property, or rights or interests therein, and specifically including payments to the Developer and other nongovernmental parties as reimbursement for, respectively, Property Assembly Costs and the property assembly costs incurred by such other nongovernmental parties;
- (c) Site preparation costs, including, but not limited to, clearance of any area within the



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252 Project Area by demolition or  
253 removal of existing buildings,  
254 structures, fixtures, utilities and  
255 improvements, and clearing and  
256 grading; and including installation,  
257 repair, construction,  
258 reconstruction, or relocation of  
259 public streets, public utilities,  
260 and other public site improvements  
261 (and the acquisition of necessary  
262 rights-of-way and easements  
263 therefor) within or outside the  
264 boundaries of the Project Area which  
265 are essential to the preparation of  
266 the Project Area for use in  
267 accordance with the Economic  
268 Development Plan; and specifically  
269 including payments to the Developer  
270 and other nongovernmental parties as  
271 reimbursement for site preparation  
272 costs incurred by the Developer or  
273 such other nongovernmental parties;  
274  
275 (d) Costs of renovation, rehabilitation,  
276 reconstruction, relocation, repair  
277 or remodeling of any existing public  
278 or private buildings, improvements  
279 and fixtures within the Project  
280 Area, and specifically including  
281 payments to the Developer or other  
282 nongovernmental parties as  
283 reimbursement for such costs  
284 incurred by the Developer or such  
285 other nongovernmental parties;  
286  
287 (e) Costs of construction within the  
288 Project Area of public works or  
289 improvements, including but not  
290 limited to, buildings, structures,  
291 works, utilities or fixtures;  
292  
293 (f) Financing costs, including, but not  
294 limited to, all necessary and  
295 incidental expenses related to the  
296 issuance of any Obligations, payment  
297 of any interest on any Obligations  
298 issued hereunder which accrues  
299 during the estimated period of  
300 construction of the part of the  
301 Economic Development Project for  
302 which such Obligations are issued  
303 and for not exceeding thirty-six

(36) months thereafter, and any reasonable reserves related to the issuance of such Obligations;

(g) All or a portion of a Taxing District's capital costs resulting from the Economic Development Project necessarily incurred or estimated to be incurred by a Taxing District in the furtherance of the objectives of the Economic Development Plan and Economic Development Project, to the extent the Village, by written agreement, accepts and approves such costs;

(h) Relocation costs to the extent that the Village determines that relocation costs shall be paid or is required to make payment of relocation costs by federal or State law;

(i) The estimated tax revenues from real property in the Project Area acquired by the Village which, according to the Economic Development Plan, is to be used for a private use and which any Taxing District would have received had the Village not adopted tax increment allocation financing for the Project Area and which would result from such Taxing District's levies made after the time of the adoption by the Village of tax increment allocation financing to the time the current equalized assessed value of real property in the Project Area exceeds the Total Initial Equalized Assessed Value of real property in said area;

(j) Costs of job training, advanced vocational or career education, including, but not limited to, courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more Taxing Districts, provided that such costs are related to the establishment and

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356 maintenance of additional job  
357 training, advanced vocational  
358 education or career education  
359 programs for persons employed or to  
360 be employed by employers located in  
361 the Project Area and further  
362 provided that when such costs are  
363 incurred by a Taxing District or  
364 Taxing Districts other than the  
365 Village they shall be set forth in a  
366 written agreement by or among the  
367 Village and the Taxing District or  
368 Taxing Districts, which agreement  
369 describes the program to be  
370 undertaken, including, but not  
371 limited to, the number of employees  
372 to be trained, a description of the  
373 training and services to be  
374 provided, the number and type of  
375 positions available or to be  
376 available, itemized costs of the  
377 program and sources of funds to pay  
378 the same, and the term of the  
379 agreement. Such costs include,  
380 specifically, the payment by  
381 community college districts of costs  
382 pursuant to SS3-37, 3-38, 3-40 and 3-  
383 40.1 of the Public Community College  
384 Act (Ill.Rev.Stat.Ch.103, S103  
385 et.seq.) and by school districts of  
386 costs pursuant to SS10-22.20a and  
387 10-23.3a of The School Code  
388 (Ill.Rev.Stat.Ch. 122);

389  
390 (k) Private financing costs incurred by  
391 the Developer or other  
392 nongovernmental parties in  
393 connection with the Economic  
394 Development Project, and  
395 specifically including payments to  
396 the Developer or other  
397 nongovernmental parties as  
398 reimbursement for such costs  
399 incurred by the Developer or such  
400 other nongovernmental parties,  
401 provided that:

402  
403 (i) private financing costs shall  
404 be paid or reimbursed by the  
405 Village only pursuant to the  
406 prior official action of the  
407 Village evidencing an intent to

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408 pay or reimburse such private  
409 financing costs;  
410  
411 (ii) except as provided in  
412 subparagraph (iv), the  
413 aggregate amount of such costs  
414 paid or reimbursed by the  
415 Village in any one year shall  
416 not exceed 30% of such costs  
417 paid or incurred by the  
418 Developer or such other  
419 nongovernmental parties in that  
420 year;  
421  
422 (iii) private financing costs shall  
423 be paid or reimbursed by the  
424 Village solely from the Special  
425 Tax Allocation Fund established  
426 pursuant to the Act and shall  
427 not be paid or reimbursed from  
428 the proceeds of any Obligations  
429 issued by the Village;  
430  
431 (iv) if there are not sufficient  
432 funds available in the Special  
433 Tax Allocation Fund in any year  
434 to make such payment or  
435 reimbursement in full, any  
436 amount of such interest cost  
437 remaining to be paid or  
438 reimbursed by the Village shall  
439 accrue and be payable when  
440 funds are available in the  
441 Special Tax Allocation Fund to  
442 make such payment; and  
443  
444 (v) in connection with its approval  
445 and certification of the  
446 Economic Development Project  
447 pursuant to Section 5 of the  
448 Act, the Village shall forward  
449 a copy of this Agreement to the  
450 Department;  
451  
452 (l) Other eligible expenses, as  
453 permitted by the Act; and  
454  
455 (m) Developer Advances made to satisfy  
456 or pay any of the foregoing Project  
457 Costs (other than those identified  
458 in paragraph (k) above).  
459

460 **PROPERTY**  
461 **ASSEMBLY COSTS**

The purchase price that is to be paid for the Subject Property pursuant to the Acquisition Contracts, and all reasonable title and survey charges; reasonable brokerage fees; reasonable attorneys fees; reasonable escrow charges; and all reasonable costs of soil, engineering and other "due diligence" tests and studies incurred in connection with the acquisition of the Subject Property.

469  
470 **PUBLIC**  
471 **IMPROVEMENTS**

The Public Site Improvements and the Public Works and Improvements.

472  
473 **PUBLIC**  
474 **SITE**  
475 **IMPROVEMENTS**

The public streets, public utilities and other public site improvements consisting of the Phase I Development Public Site Improvements, all of which are set forth on Exhibit "H" attached hereto and the Phase II Development Public Site Improvements, all of which are set forth on Exhibit "I" attached hereto, which are constructed, or to be constructed, by the Village or the Developer, and all reasonable or necessary activities which are undertaken in connection with such construction, within the Project Area (or outside the boundaries of the Project Area but essential to the preparation of the Project Area for use in accordance with the Economic Development Plan), which result in the Village's incurring "site preparation costs", as defined by Section 3(e)(3) of the Act. Exhibits "H" and "I" may be amended by the Parties, from time to time, pursuant to the provisions of this Agreement. Natural gas, electric and telephone service shall not be included within the definition of "public utilities", as used above and as used in Section 4.3 of this Agreement, except to the extent that they relate to natural gas, electric and telephone service improvements which are to be dedicated to, and owned by, the Village (e.g. public street lights).

502  
503 **PUBLIC WORKS**  
504 **AND**  
505 **IMPROVEMENTS**

Those public improvements (including, but not limited to, buildings, structures, works, utilities or fixtures) identified on Exhibit "J" attached hereto which are constructed, or to be constructed, by the Village, and all activities which are undertaken in connection with such construction, which are authorized by this Agreement and the Economic Development Plan which result in the Village's incurring

512 "costs of construction", as defined by Section  
513 3(e)(5) of the Act. Exhibit "J" may be  
514 amended by the Parties, from time to time,  
515 pursuant to the provisions of this Agreement.  
516  
517 **REVENUE** The economic development project tax increment  
518 **BONDS** revenue bonds authorized to be issued by the  
519 Village pursuant to the terms of Section  
520 6.3(b) and Article 8 of this Agreement.  
521  
522 **SANITARY SEWER** The sanitary sewer interceptor and related  
523 **IMPROVEMENTS** facilities which, pursuant to the terms of  
524 this Agreement, are to be constructed by the  
525 Village in order to provide sanitary sewer  
526 service to the Project Area.  
527  
528 **SMG** Sears Merchandise Group, a group of Sears,  
529 Roebuck and Co., a New York corporation.  
530  
531 **SMG** The mixed use complex of no less than  
532 **HOME OFFICE** 1,600,000 square feet of low to mid-rise  
533 **COMPLEX** development which is to be constructed on a  
534 portion of the Phase I Site for purposes of  
535 housing Developer's Merchandise Group home  
536 office and related uses. The location of such  
537 portion of the Phase I Site is generally  
538 depicted on Exhibit "K" attached hereto.  
539  
540 **SMG OCCUPANCY DATE** The date the Developer substantially completes  
541 the SMG Home Office Complex and applies to the  
542 Village, in accordance with Village  
543 ordinances, for issuance of a temporary or  
544 permanent certificate of occupancy for the SMG  
545 Home Office Complex.  
546  
547 **SMG OCCUPANCY** The written notice which the Developer is to  
548 **DATE NOTICE** deliver to the Village confirming that the  
549 Developer has received the last governmental  
550 permit or approval necessary to the  
551 Developer's commencement of construction of  
552 the SMG Home Office Complex. The SMG  
553 Occupancy Date Notice shall be substantially  
554 in the form of Exhibit "L" attached hereto.  
555  
556 **SPECIAL TAX** The 1989 Hoffman Estates Economic Development  
557 **ALLOCATION** Project Area Special Tax Allocation Fund,  
558 **FUND** which is a special fund established pursuant  
559 **(OR FUND)** to the provisions of the Act and created by  
560 Village Ordinance No. 2108-1989, adopted by  
561 the Corporate Authorities on September 11,  
562 1989, which shall be the repository for: (i)  
563 the Tax Increment Revenues; (ii) the other

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564		monies which are to be deposited in the Fund
565		pursuant to the Act or this Agreement; and
566		(iii) the income earned on the investment of
567		the monies deposited in the Fund.
568		
569	<b>SUBJECT</b>	That certain parcel of real estate under the
570	<b>PROPERTY</b>	ownership or control of the Developer
571		consisting of approximately 788 acres, bounded
572		generally on the north by Higgins Road, on the
573		east by Route 59, on the south by I-90 and on
574		the west by Beverly Road (excluding the
575		approximately 44 acres located east of Old
576		Sutton Road and north of the corporate limits
577		of the Village). The Subject Property is
578		legally described on Exhibit "M" attached
579		hereto.
580		
581	<b>TAX INCREMENT</b>	The sum of the Phase I Tax Increment Revenues
582	<b>REVENUES</b>	and the Phase II Tax Increment Revenues.
583		
584	<b>TAXING DISTRICTS</b>	Counties, townships, municipalities, and
585		school, road, park, library, sanitary,
586		mosquito abatement, forest preserve, public
587		health, fire protection, river conservancy,
588		tuberculosis sanitarium and any other
589		municipal corporations or districts with the
590		power to levy taxes on real property located
591		in the Project Area.
592		
593	<b>TOTAL INITIAL</b>	The total initial equalized assessed value of
594	<b>EQUALIZED</b>	the taxable real property within the Project
595	<b>ASSESSED VALUE</b>	Area, as determined by the County Clerk of
596		Cook County in accordance with the provisions
597		of the Act.
598		
599	<b>TOTAL MINIMUM</b>	That amount of the assessed valuation of the
600	<b>ASSESSED</b>	Subject Property for a given levy year which,
601	<b>VALUATION</b>	when taken together with the applicable tax
602		rate and state equalization factor for such
603		levy year, will be required to produce Tax
604		Increment Revenues sufficient: (i) to satisfy
605		the debt service requirements, including
606		additions to required reserves, on outstanding
607		Revenue Bonds for the next succeeding year, as
608		required by then outstanding Village
609		ordinances authorizing issuance of such
610		Revenue Bonds; and (ii) to pay the
611		appropriate Allocated Tax Increment Revenue
612		Amounts for the next succeeding year, as set
613		forth on Exhibits "B" and "C" attached hereto.
614		
615		

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616 **VILLAGE** The Village of Hoffman Estates, an Illinois  
617 home rule municipal corporation.  
618  
619 **VILLAGE MUNICIPAL** The municipal service facility which is to be  
620 **FACILITY** constructed on the Village Municipal Site  
621 which may include offices, a Village fire  
622 station, a Village police station and an  
623 interior public works area. A "Village Green"  
624 may adjoin the Village Municipal Facility and  
625 be located on the Village Municipal Site.  
626  
627 **VILLAGE** That certain fifteen (15) acre portion of the  
628 **MUNICIPAL SITE** Subject Property which is to be agreed upon  
629 and identified by the Parties on the  
630 conceptual land use plan submitted pursuant to  
631 Section 3.1(d)(1)(iv) of this Agreement.  
632  
633 **VILLAGE PROJECT** Those Project Costs incurred at any time by  
634 **COSTS** the Village which shall include, and be  
635 limited to, the following (to the extent  
636 permitted under the Act):  
637  
638 (a) Costs of studies, surveys,  
639 development of plans and  
640 specifications, and administration,  
641 personnel and professional service  
642 costs related to the Village's  
643 implementation and administration of  
644 the Economic Development Plan and  
645 Economic Development Project,  
646 (including, but not limited to,  
647 personnel and professional costs for  
648 administrative, engineering, legal,  
649 marketing, financial, planning,  
650 public works or other services);  
651  
652 (b) Costs of providing police and fire  
653 protection to the Development and  
654 the Project Area;  
655  
656 (c) Costs of development, construction,  
657 maintenance, repair and replacement  
658 of the Public Works and Improvements  
659 (including, without limitation, the  
660 Village Municipal Facility and the  
661 Village Water Tank);  
662  
663 (d) Costs of: (i) maintenance and repair  
664 of the Public Site Improvements  
665 after their conveyance to, and  
666 acceptance by, the Village; and  
667 Village-owned water lines and sewer



lines existing as of the date of this Agreement either within or outside the boundaries of the Project area; and (ii) replacement of Public Site Improvements after their conveyance to, and acceptance by, the Village in accordance with Village ordinance; and

- (e) All financing costs related to the costs identified in (a) through (d) above, including, but not limited to, all necessary and incidental expenses related to the issuance of those Village Obligations (including the General Obligation Bonds) which are issued to pay the costs identified in (a) through (d) above; payment of any interest on any such Village Obligations which accrue during the estimated period of construction of the part of the Economic Development Project for which such Village Obligations are issued and for not exceeding thirty-six (36) months thereafter; and any reasonable reserves related to the issuance of such Village Obligations.

**VILLAGE WATER TANK**

The water storage tank which is to be constructed by the Village within the Project Area or within the vicinity of the Project Area for purposes of furthering the use of the Project Area in accordance with the Economic Development Plan. The Village Water Tank is to provide storage for not less than seven hundred fifty thousand (750,000) gallons of water.

**RECITALS**

A. Pursuant to the Act and to the terms of the Economic Development Plan, the Village proposed the Economic Development Project for economic development of certain designated areas either within its municipal limits or pending annexation to the Village. The site proposed for the Economic Development Project is the Project Area. The Project Area includes the Subject Property. The Economic Development Plan sets forth a mixture of land use activities within the Project Area.

B. On September 11, 1989, the Village adopted Ordinance No. 2108-1989 adopting tax increment allocation financing for the Project Area. Such ordinance provides that the Tax Increment Revenues which are realized within the Project Area are to be paid to the Village for deposit in the Special Tax Allocation Fund in order to pay Project Costs and principal and interest obligations coming due on the Obligations.

C. The Corporate Authorities, after due and careful consideration, have concluded that the development of the Project Area, as provided in this Agreement and in the Economic Development Plan, will: (i) create or retain not less than 2,000 full-time equivalent jobs; (ii) cause private investment in an amount of not less than \$100,000,000 to occur in the Project Area; (iii) encourage the increase of commerce and industry within the State of Illinois, thereby reducing the evils attendant upon unemployment and increasing opportunities for personal income; (iv) increase or maintain the property, sales and income tax bases of the Village

739 and of the State of Illinois and enable the Village to control the  
740 development of the Subject Property; and (v) otherwise be in the  
741 best interests of the Village.

742 D. Subject to the terms and provisions of the Act and this  
743 Agreement: (i) the Developer intends to acquire, or to cause its  
744 nominee to acquire, the Subject Property, and the Village intends  
745 to reimburse the Developer for the Property Assembly Costs the  
746 Developer incurs, or to pay the Developer's Property Assembly  
747 Costs, out of Tax Increment Revenues (other than the Allocated Tax  
748 Increment Revenue Amounts), or other monies deposited in the Fund,  
749 the proceeds of Revenue Bonds, and the proceeds of Developer  
750 Advances; (ii) the Developer intends to develop the Phase I Site  
751 with at least the SMG Home Office Complex; (iii) the Developer may  
752 hereafter develop the Phase II Site with the uses specified in the  
753 Economic Development Plan; and (iv) the Village intends to  
754 reimburse the Developer for the Project Costs the Developer pays,  
755 incurs or advances to, or on behalf of, the Village out of Tax  
756 Increment Revenues (other than the Allocated Tax Increment Revenue  
757 Amounts), other monies deposited in the Fund, or from the proceeds  
758 of Revenue Bonds.

759 E. The Parties acknowledge that the purchase price  
760 established by the Acquisition Contracts for the Subject Property  
761 is reasonable.

762 F. The development of the Subject Property, and the  
763 fulfillment generally of the terms and provisions of this  
764 Agreement, are in the vital and best interest of the Village and

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765 the health, safety, and welfare of its residents and taxpayers.

766 G. The Parties intend to enter into this Agreement under the  
767 authority of the Act and pursuant to the Village's home-rule  
768 authority.

769 NOW, THEREFORE, in consideration of the foregoing Recitals,  
770 and the mutual agreements set forth below, it is hereby agreed by  
771 and between the Parties as follows:

772 ARTICLE 1. INCORPORATION OF RECITALS

773 The representations set forth in the foregoing Recitals are  
774 material to this Agreement and are hereby incorporated into and  
775 made a part of this Agreement as though they were fully set forth  
776 in this Article 1.

777 ARTICLE 2. GOALS, MUTUAL ASSISTANCE AND COOPERATION

778 2.1. Goals and Mutual Assistance

779 The Parties acknowledge that it is their mutual goal and  
780 desire to further the objectives of the Economic Development Plan  
781 and Economic Development Project, to further the improvement and  
782 development of the Project Area, and to finance all costs of the  
783 Development as Project Costs (to the fullest extent permitted by  
784 law and in the most economically efficient manner) pursuant to the  
785 provisions of this Agreement. Accordingly, the Parties shall do  
786 all things necessary or appropriate to carry out the terms and  
787 provisions of this Agreement and to aid and assist each other in  
788 furthering the objectives of this Agreement and the intentions of  
789 the Parties as reflected by said terms. Specifically, if it shall  
790 become necessary, the Village: (i) shall assist the Developer in

791 acquiring portions of the Subject Property (whether or not such  
792 portions are the subject of the Acquisition Contracts); and (ii) at  
793 the request of the Developer, shall attempt to acquire properties,  
794 rights-of-way and easements necessary to the development of the  
795 Project Area by the use of its power of eminent domain (provided,  
796 however, that the Village makes no representation or warranty  
797 regarding its ability to acquire any such portions of the Subject  
798 Property, or any of such properties, rights-of-way or easements by  
799 use of its power of eminent domain, and provided further that the  
800 Developer shall pay and satisfy all purchase prices, settlements,  
801 judgments, orders or other costs and expenses incurred by the  
802 Village in the exercise of such powers by making a Developer  
803 Advance in the amount of such costs and expenses). In the event  
804 the Village acquires all or any portion of the Subject Property  
805 through the use of its power of eminent domain as set forth above,  
806 it shall convey the same to the Developer immediately thereafter  
807 for one dollar (\$1.00).

808 **2.2. Cooperation in Seeking Financial Aid and Assistance**

809 The Parties shall cooperate with each other in seeking  
810 financial or other aid and assistance required for or useful to the  
811 construction of roadway, highway and utility improvements  
812 (including a two million three hundred thousand dollar  
813 (\$2,300,000.00) "Build Illinois" infra-structure grant for the  
814 construction of the Sanitary Sewer Improvements) within the Project  
815 Area or outside the boundaries of the Project Area (but essential  
816 to the preparation of the Project Area for use in accordance with

the Economic Development Plan) from all appropriate governmental bodies (whether Federal, State, County or local). In addition, in order to gain the Department's certification of the Village's designation of the Project Area as an "Enterprise Zone" for the maximum statutory term pursuant to the Illinois Enterprise Zone Act (Ill.Rev.Stat. Ch. 67 1/2,SS601 et seq.), the Village, in accordance with the provisions of said statute and within sixty (60) days of the date of this Agreement, shall: (i) pass an ordinance designating the Project Area as an "Enterprise Zone"; (ii) submit a complete written application to the Department seeking the Department's certification of the Village's designation of the Project Area as an "Enterprise Zone"; and (iii) take such other actions as may be necessary or appropriate under the provisions of said statute to gain certification by the Department of the Project Area as an "Enterprise Zone". The Village, pursuant to said statute or other applicable state statutes or local ordinances, shall also consent to local sales tax exemption for construction materials purchased in connection with the Development.

**ARTICLE 3. DEVELOPMENT OF THE SUBJECT PROPERTY**

**3.1. Phase I Development**

**(a) General.**

The Phase I Development shall be the first priority of the Parties. The first stage of that development shall encompass the construction of the SMG Home Office Complex. The SMG Home Office Complex shall be

constructed in a manner consistent with the goals and objectives of the Economic Development Plan and shall be of a quality that is consistent with other first-class office facilities located in the Greater Chicagoland Metropolitan Area.

(b) Permits.

Before commencement of construction of any portion of the SMG Home Office Complex, the Developer, at its expense, shall secure, or cause to be secured, all permits or approvals which may be required by the Village and other governmental agencies having jurisdiction over such construction, in whole or in part, including, without limitation, all permits required, if any, from the U.S. and Illinois Environmental Protection Agencies, the Metropolitan Water Reclamation District, the U.S. Army Corps of Engineers, the Illinois Department of Transportation and all other local, Federal and State agencies having or exercising any jurisdiction over such construction or over the portion of the Project Area that is affected by such construction. The Village shall provide all proper assistance to the Developer in securing such permits and shall promptly execute all permits and permit applications which require or benefit from such execution provided such permits and permit applications (and the plans relating thereto) are in proper form and comply with all lawful requirements. The

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Village shall promptly issue all permits required to be issued by the Village provided such permits (and the permit applications and plans relating thereto) are in proper form and comply with all lawful requirements.

(c) Preliminary Grading.

Notwithstanding the provisions of the foregoing paragraph (b), and provided the public hearings described in Section 3.1(d) have commenced, the Board of Trustees shall authorize issuance to the Developer of a site development permit for mass grading and storm water management installation and other similar excavation-related tasks on the Subject Property prior to receipt of all of the foregoing permits, prior to final Village approval of the Amendment to the Annexation Agreements and prior to approval of final engineering plans for the Phase I Development provided that:

- (1) The Developer satisfies the Village staff and Board of Trustees that the Developer is providing the necessary erosion and sedimentation control measures to satisfy the principles set forth in Sub-Section A of Section 10-8-6 of the Village's Municipal Code (Erosion and Sedimentation Control); and
- (2) The Board of Trustees receives a tree survey from the Developer showing all trees having a four inch (4") caliper or more and the Board approves a tree

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895 preservation plan satisfying the principles set  
896 forth in Sub-section D in Section 10-8-11 of the  
897 Hoffman Estates Municipal Code and issues or  
898 directs the Village staff to issue any necessary  
899 tree removal permits; and

900 (3) That such grading and other work shall be  
901 undertaken at the Developer's sole cost and risk  
902 and the Developer, pursuant to Article 20 of this  
903 Agreement, shall indemnify the Village against,  
904 and hold the Village harmless from, all costs,  
905 expenses, reasonable attorney fees, losses,  
906 liabilities and damages that may be suffered or  
907 sustained by the Village as a result of Developer's  
908 undertaking such grading and other work.

909 (4) That the President and Board of Trustees shall find  
910 that provisions C - (1), (2) and (3) above are  
911 satisfied and grant approval for such preliminary  
912 grading.

913 (d) Submission of Development Documentation

914 (1) On or before March 1, 1990, the Developer shall  
915 submit the following to the Village for the  
916 Village's review and approval:

917 (i) A Community Impact Statement for the Subject  
918 Property submitted pursuant to Village  
919 Ordinance No. 914-1977;

920 (ii) An application for approval by the Corporate

921 Authorities of the Amendment to the Annexation  
922 Agreements;  
923 (iii) An application for the granting of the relief  
924 provided for in the Amendment to the  
925 Annexation Agreements;  
926 (iv) A conceptual land use plan for the Subject  
927 Property (which plan identifies, among other  
928 things, estimates of square footage, proposed  
929 land uses, internal roadway plans and the  
930 proposed location of the Village Municipal  
931 Site); and  
932 (v) A preliminary site plan, preliminary plat of  
933 subdivision, preliminary engineering plans,  
934 preliminary landscaping plans and other  
935 appropriate preliminary documentation for the  
936 Phase I Development.

937 Within thirty (30) days of the Village's receipt of  
938 the last of the foregoing submittals (provided such  
939 submittals are complete and in a form acceptable to the  
940 Village), the Village shall schedule, and give all  
941 notices required to be given for, all public hearings  
942 required to be conducted by the Corporate Authorities,  
943 the Board of Trustees, the Plan Commission, the Zoning  
944 Board of Appeals and all other commissions and committees  
945 of the Village for purposes of considering the  
946 Developer's applications, plats and plans. Such public

947 hearings shall be conducted by the Village in an  
948 expeditious manner and, to the extent practicable, but in  
949 the sole discretion of the Village, such public hearings  
950 shall be conducted concurrently before the aforesaid  
951 entities, commissions and committees. The Developer, at  
952 any of such public hearings, shall have the right, at the  
953 Developer's option, to present preliminary and final  
954 plats and plans concurrently or to bypass the submittal  
955 of preliminary plats and plans entirely in favor of  
956 proceeding directly with the review and approval of final  
957 plats and plans.

958 (2) Not later than sixty (60) days after the Village's  
959 adoption of the ordinances and resolutions  
960 authorizing the execution of the Amendment to the  
961 Annexation Agreements and granting the relief  
962 provided for in the Amendment to the Annexation  
963 Agreements, the Developer shall submit the  
964 following to the Village for the Village's review  
965 and approval:

966 (i) A final plat of subdivision for the Phase I  
967 Development;

968 (ii) Final grading, utility and roadway plans for  
969 the construction of the SMG Home Office  
970 Complex;

971 (iii) Final engineering plans for the Public Site  
972 Improvements which are to be constructed as

973 part of the Phase I Development (as identified  
974 on Exhibit "H" to this Agreement), which  
975 improvements shall include all Public Site  
976 Improvements necessary to the construction,  
977 use and occupancy of the SMG Home Office  
978 Complex; and

979 (iv) Such other documentation as the Village may  
980 reasonably request as a condition precedent to  
981 the issuance of a building permit for the SMG  
982 Home Office Complex.

983 The Village's staff and representatives, during the  
984 time the Developer is preparing all such final plats and  
985 plans, shall meet with the Developer, and its  
986 representatives, to coordinate the preparation of such  
987 plats and plans and their submission to, and review by,  
988 the Village. The Village and the Developer shall  
989 communicate and consult informally with each other as  
990 frequently as is necessary to insure that the review,  
991 processing and approval of all such plats and plans  
992 receives prompt consideration by the Village.

993 The Board of Trustees shall approve or disapprove  
994 all such final plats and plans within thirty (30) days of  
995 their submission to the Village provided: (i) such plats  
996 and plans are complete, have been reviewed by the Plan  
997 Commission upon an expedited schedule that shall be  
998 provided for in the Amendment to the Annexation

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999 Agreements, and are in a form acceptable to the Village;  
1000 (ii) the Amendment to the Annexation Agreements has then  
1001 been approved by the Corporate Authorities and executed  
1002 by the Parties; (iii) all annexation and zoning  
1003 ordinances provided for in the Amendment to the  
1004 Annexation Agreements have been adopted by the Village;  
1005 and (iv) such plats and plans substantially conform to  
1006 the preliminary plats and plans. If such plats or plans  
1007 are disapproved, as soon as reasonably possible  
1008 thereafter, the Developer shall submit revised plats and  
1009 plans to the Village.

1010 (e) Construction of Phase I Development Public Site  
1011 Improvements.

1012 (1) The Developer is hereby appointed as the Village's  
1013 sole and exclusive agent for purposes of managing  
1014 and overseeing the engineering, design and  
1015 construction of those Public Site Improvements  
1016 which are to be constructed as part of the Phase I  
1017 Development (as identified on Exhibit "H" to this  
1018 Agreement), provided, however, that: (i) before  
1019 either the Village or the Developer enters into any  
1020 contract for construction or construction services  
1021 relating to the construction of such Public Site  
1022 Improvements, the Developer shall select a  
1023 contractor and the Village shall approve such  
1024 contractor provided the conditions of this Section  
1025 3.1(e) are met and further provided the contractor

1026 can complete the improvements in such a manner and  
1027 in accordance with such a timetable as may be  
1028 agreed to by the Parties; and (ii) all such  
1029 contracts shall be executed by the Village to the  
1030 extent necessary to further the goals of this  
1031 Agreement. The Developer shall not be required to  
1032 advertise for bids or to submit multiple bids to  
1033 the Village prior to entering into such contracts.  
1034 (2) The Board of Trustees shall receipt all contracts  
1035 submitted to it by the Developer in order to  
1036 review: (i) that the contractors which are to  
1037 perform work pursuant to such contracts are  
1038 sufficiently experienced in doing the size and type  
1039 of work required for the construction of the  
1040 improvements to be constructed; (ii) that all such  
1041 contracts accurately reflect the cost of completing  
1042 such improvements; and (iii) that no purpose would  
1043 be served in the Village's obtaining further bids  
1044 for the construction of such improvements. The  
1045 Board of Trustees shall have twenty-one (21) days  
1046 to review and approve or disapprove the contracts  
1047 submitted to it by the Developer. If disapproved,  
1048 the Village Manager shall give reasons, in writing,  
1049 to the Developer for such disapproval. All  
1050 construction contracts shall provide for payment in  
1051 accordance with the provisions of this Agreement.

1052 With respect to such construction contracts, and  
1053 where the provisions of this Section 3.1(e) are  
1054 satisfied, the Board of Trustees, in accordance  
1055 with Ill.Rev.Stat. Ch. 24, S8-9-1 (1987), shall  
1056 hereafter waive any advertising for bids by the  
1057 Village.

1058 Notwithstanding the foregoing, the Village hereby  
1059 approves those contracts which have been entered into as  
1060 of the date of this Agreement or which are to be entered  
1061 into, by or on behalf of the Developer, with the parties  
1062 and for the services identified on Exhibit "N" to this  
1063 Agreement; waives advertising for bids for the services  
1064 to be provided by such contracts; and acknowledges that  
1065 all costs incurred pursuant to those contracts shall be  
1066 considered Project Costs that relate directly to Public  
1067 Improvements or Public Site Improvements or Property  
1068 Assembly Costs as Project Costs and both the Village and  
1069 Sears agree that Chapman & Cutler as Bond Counsel for the  
1070 Village will determine what costs in Exhibit "N" qualify  
1071 as Project Costs under the Act. The provisions of  
1072 Section 17.5 of this Agreement, Dispute Resolution shall  
1073 not apply to the determination made by Chapman & Cutler  
1074 relating to Exhibit "N" which are to be paid or  
1075 reimbursed pursuant to the terms of this Agreement.

1076 (3) Notwithstanding the provisions of the foregoing  
1077 paragraphs (1) and (2), the Village retains the

right and the obligation to undertake the engineering, design and construction of the Sanitary Sewer Improvements and agrees to substantially complete, or cause the substantial completion of, the construction of the Sanitary Sewer Improvements by the SMG Occupancy Date.

(f) SMG Occupancy Date.

The Developer shall deliver the SMG Occupancy Date Notice to the Village not more than sixty (60) days after the date of the Amendment to the Annexation Agreements, and the Developer shall substantially complete, or cause the substantial completion of, the SMG Home Office Complex, and cause the SMG Occupancy Date to occur, not later than thirty (30) months after the date the Developer delivers the SMG Occupancy Date Notice to the Village provided the Village has completed construction of the Village Water Tank and the Sanitary Sewer Improvements.

3.2. Phase II Development

(a) General.

The Phase II Development shall be constructed in accordance with the terms and provisions of the Economic Development Plan and shall include amenities, facilities and landscaping that are of a similar quality to other first-class office and mixed use developments located in the Greater Chicagoland Metropolitan Area. The Phase II



1104 Development may occur in stages or phases. The Developer  
1105 shall not be obligated to commence construction of the  
1106 Phase II Development, or any portion thereof, at any  
1107 time.

1108 (b) Construction of Phase II Development Public Site  
1109 Improvements.

1110 (1) The Village retains the right to manage and oversee  
1111 the engineering, design and construction of those  
1112 Public Site Improvements which are to be  
1113 constructed as part of the Phase II Development  
1114 (except those Phase II Development Public Site  
1115 Improvements identified on Exhibit "I" which are to  
1116 be constructed upon the Subject Property), provided  
1117 that the Village shall coordinate such engineering,  
1118 design and construction with the Developer. The  
1119 Developer shall act as the Village's agent for  
1120 purposes of managing and overseeing the  
1121 engineering, design and construction of the Phase  
1122 II Development Public Site Improvements identified  
1123 on Exhibit "I" to this Agreement which are to be  
1124 constructed on the Subject Property provided,  
1125 however, that: (i) before either the Village or the  
1126 Developer enters into any contract for construction  
1127 or construction services relating to the  
1128 construction of such Phase II Development Public  
1129 Site Improvements, the Developer shall select a  
1130 contractor and the Village shall approve such

1131 contractor provided the conditions of this Section  
1132 3.2(b) are met and further provided the contractor  
1133 can complete the improvements in such a manner and  
1134 in accordance with such a timetable as may be  
1135 agreed to by the Parties; and (ii) all such  
1136 contracts shall be executed by the Village to the  
1137 extent necessary to further the goals of this  
1138 Agreement. The Developer shall not be required to  
1139 advertise for bids or to submit multiple bids to  
1140 the Village.

1141 (2) The Board of Trustees shall receipt all contracts  
1142 submitted to it by the Developer in connection with  
1143 the construction of the Phase II Development Public  
1144 Site Improvements identified on Exhibit "I" to this  
1145 Agreement in order to review: (i) that the  
1146 contractors which are to perform work pursuant to  
1147 such contracts are sufficiently experienced in  
1148 doing the size and type of work required for the  
1149 construction of the improvements to be constructed;  
1150 (ii) that all contracts accurately reflect the cost  
1151 of completing such improvements; and (iii) that no  
1152 purpose would be served in the Village's obtaining  
1153 bids for the construction of such improvements.  
1154 The Board of Trustees shall have twenty-one (21)  
1155 days to review and approve or disapprove the  
1156 contracts submitted to it by the Developer. If

1157 disapproved, the Village Manager shall give  
1158 reasons, in writing, to the Developer for such  
1159 disapproval. All construction contracts shall  
1160 provide for payment in accordance with the  
1161 provisions of this Agreement. With respect to such  
1162 construction contracts and where the provisions of  
1163 this Section 3.2(b) are satisfied, the Board of  
1164 Trustees, in accordance with Ill.Rev.Stat.  
1165 Ch.24,S8-9-1(1987), shall hereafter waive any  
1166 advertising for bids by the Village.

1167 **3.3. Construction of Public Works and Improvements**

1168 The Village retains the right to manage and oversee the  
1169 engineering, design and construction of the Public Works and  
1170 Improvements. The design and location of the Village Water Tank  
1171 and the parameters for the design and construction of the Village  
1172 Municipal Facility and the Village Water Tank shall be provided for  
1173 in the Amendment to the Annexation Agreements.

1174 **3.4. Covenant to Run With Land Regarding Uses of the Subject**  
1175 **Property.**

1176 The Developer hereby covenants that, for the term of the  
1177 Economic Development Plan, the Subject Property shall be devoted  
1178 only to the uses specified in the Economic Development Plan. Such  
1179 covenant shall constitute a covenant running with the land which  
1180 shall terminate upon expiration of the Economic Development Plan.  
1181 At the request of the Village, the Developer shall execute, and  
1182 record in the Cook County Recorder of Deeds Office, a Declaration  
1183 of Covenants that confirms such covenant and that subjects the

1184 Subject Property to the terms of this Agreement and the Economic  
1185 Development Plan.

1186 **3.5. Insurance**

1187 Prior to the commencement of construction of any portion of  
1188 the Development, the Developer shall furnish, or cause to be  
1189 furnished, to the Village certificates of insurance evidencing the  
1190 procurement of comprehensive bodily injury and property damage  
1191 liability insurance policies in the amount of at least two million  
1192 dollars (\$2,000,000.00) for any injury or death to persons, five  
1193 million dollars (\$5,000,000.00) for any injury or death to any  
1194 number of persons arising out of any aggregate occurrence and five  
1195 hundred thousand dollars (\$500,000.00) for property damage, which  
1196 certificates confirm the naming of the Village, its officials,  
1197 agents and employees as "additional insureds" under all such  
1198 policies. The Developer shall have the option to provide the  
1199 required insurance in a combined single limit form of not less than  
1200 \$5,000,000.00. All such policies shall provide for at least thirty  
1201 (30) days' notice to the Village of the cancellation or termination  
1202 of such policies. Liability under the Illinois Structural Work Act  
1203 and contractual liability for indemnification of the Village, its  
1204 officials, agents and employees, shall be fully insured under these  
1205 policies for the limits set forth above. The Developer shall cause  
1206 such insurance to be maintained in force for so long as the  
1207 Developer is undertaking the construction of any improvements on  
1208 the Subject Property. Provided the Developer delivers to the  
1209 Village documents that provide assurances to the Village equivalent

1210 to the assurances provided by the certificates of insurance as  
1211 required above, the Developer shall have the right to self-insure  
1212 for any or all of the losses described above.

1213 **3.6. Compliance of Plats, Plans and Construction Activities**  
1214 **with Village Ordinances.**

1215 (a) All plats and plans submitted to the Village for the  
1216 Village's review and approval shall comply with the codes  
1217 and ordinances of the Village that are in effect at the  
1218 time of such submittal except to the extent such codes or  
1219 ordinances conflict with, or are made inapplicable to the  
1220 Subject Property by, the Beverly Annexation Agreement,  
1221 the Nederlander Annexation Agreement or the Amendment to  
1222 the Annexation Agreements.

1223 (b) All construction activities undertaken on the Subject  
1224 Property by, or under the direction of, the Developer  
1225 shall be undertaken in compliance with the codes and  
1226 ordinances of the Village that are in effect at the time  
1227 of such construction except to the extent such codes or  
1228 ordinances conflict with, or are made inapplicable to the  
1229 Subject Property by, the Beverly Annexation Agreement,  
1230 the Nederlander Annexation Agreement, the Amendment to  
1231 the Annexation Agreements or this Agreement.

1232

1233

1234 ARTICLE 4. COSTS OF THE DEVELOPMENT CONSTITUTING "PROJECT  
1235 COSTS" WHICH ARE TO BE PAID OR FINANCED  
1236 PURSUANT TO THE PROVISIONS OF THIS AGREEMENT

1237 4.1. General

1238 To the fullest extent permitted by law, but subject to the  
1239 provisions of Section 4.3 of this Article 4, all costs incurred by  
1240 the Parties in furtherance of the Economic Development Plan and the  
1241 Economic Development Project and the Development shall be deemed  
1242 Project Costs and such costs shall be paid for or financed pursuant  
1243 to the provisions of Article 6 of this Agreement.

1244 4.2. Project Costs Agreed Upon as of the Date of this  
1245 Agreement.

1246 As of the date of this Agreement, the Parties acknowledge the  
1247 following costs to be Project Costs which are to be paid for or  
1248 financed pursuant to the provisions of this Agreement:

1249 (a) All reasonable or necessary Property Assembly Costs  
1250 (including, without limitation, those costs identified on  
1251 Exhibit "O" attached hereto) and both the Village and  
1252 Sears agree that Chapman & Cutler as Bond Counsel for the  
1253 Village will determine what costs in Exhibit "O" qualify  
1254 as Project Costs under the Act. The provisions of  
1255 Section 17.5 of this Agreement, Dispute Resolution shall  
1256 not apply to the determination made by Chapman & Cutler  
1257 relating to Exhibit "O";

1258 (b) All reasonable or necessary costs of construction of the  
1259 Public Improvements (including, without limitation, those  
1260 costs identified on Exhibit "P" attached hereto) and both  
1261 the Village and Sears agree that Chapman & Cutler as Bond

1262 Counsel for the Village will determine what costs in  
1263 Exhibit "P" qualify as Project Costs under the Act. The  
1264 provisions of Section 17.5 of this Agreement, Dispute  
1265 Resolution shall not apply to the determination made by  
1266 Chapman & Cutler relating to Exhibit "P";

1267 (c) All reasonable or necessary costs of preparation of  
1268 surveys, development of plans and specifications,  
1269 implementation and administration of the Economic  
1270 Development Plan, and retention of personnel and  
1271 professionals for architectural, engineering, legal,  
1272 marketing, financial, planning, police, fire, public  
1273 works and other services;

1274 (d) All reasonable or necessary financing costs (including,  
1275 without limitation, all necessary and incidental expenses  
1276 related to the issuance of the Obligations, payment of  
1277 any interest on any such Obligations which accrues during  
1278 the estimated period of construction of the Economic  
1279 Development Project for which such Obligations are issued  
1280 and for not exceeding thirty-six (36) months thereafter,  
1281 and any reasonable reserves related to the issuance of  
1282 such Obligations);

1283 (e) All reasonable or necessary Village Project Costs; and

1284 (f) All reasonable or necessary private financing costs  
1285 incurred by the Developer in furtherance of the Economic  
1286 Development Plan, the Economic Development Project and  
1287 the Development, and specifically including payments to

1288 the Developer as reimbursement for such costs incurred by  
1289 the Developer, provided that:  
1290 (1) Such private financing costs shall be paid or  
1291 reimbursed by the Village only pursuant to the  
1292 prior official action of the Village evidencing an  
1293 intent to pay or reimburse the Developer for such  
1294 private financing costs (which action shall be  
1295 deemed to have been taken by the Corporate  
1296 Authorities' adoption of an ordinance authorizing  
1297 the Village's execution of this Agreement);  
1298 (2) Except as provided in subparagraph (4) hereof, the  
1299 aggregate amount of such costs paid or reimbursed  
1300 by the Village to the Developer in any one year  
1301 shall not exceed thirty percent (30%) of such costs  
1302 paid or incurred by the Developer in that year;  
1303 (3) Private financing costs shall be paid or reimbursed  
1304 by the Village solely from the Special Tax  
1305 Allocation Fund and shall not be paid or reimbursed  
1306 from the proceeds of Obligations issued by the  
1307 Village;  
1308 (4) If there are not sufficient funds available in the  
1309 Special Tax Allocation Fund in any year to make  
1310 such payment or reimbursement in full, any amount  
1311 of such interest cost remaining to be paid or  
1312 reimbursed by the Village shall accrue, and, at  
1313 Developer's request, be evidenced by the execution

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1314 and delivery of a Note, and be payable when funds  
1315 are available in the Fund to make such payment (and  
1316 any such payment shall be made without regard to  
1317 the limitations contained in subparagraph (2)  
1318 hereof); and

1319 (5) In connection with the Department's approval and  
1320 certification of the Economic Development Project  
1321 pursuant to Section 5 of the Act, the Village shall  
1322 forward a copy of this Agreement to the Department.

1323 4.3. Project Costs Incurred in Connection With the  
1324 Construction of Public Site Improvements Identified by  
1325 the Village After the Date of this Agreement.

1326 (a) If:

1327 (1) After the date of this Agreement, the Village  
1328 determines that a public street, public utility or  
1329 other public improvement that is not identified on  
1330 either Exhibit "H" or Exhibit "I" to this Agreement  
1331 must be constructed in order to further the  
1332 Economic Development Project and the Development;  
1333 and

1334 (2) The Developer accepts and agrees with such  
1335 determination;

1336 then such public street, public utility or public  
1337 improvement shall be deemed a "Public Site Improvement"  
1338 and the entire cost of constructing such Public Site  
1339 Improvement shall be deemed a Project Cost which is to be  
1340 paid for or financed pursuant to the provisions of

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Article 6 of this Agreement.

2 (b) If:

1343 (1) After the date of this Agreement, the Village  
1344 determines that a public street, public utility or  
1345 other public improvement that is not identified on  
1346 either Exhibit "H" or Exhibit "I" to this Agreement  
1347 must be constructed in order to further the  
1348 Economic Development Project and the Development;  
1349 and

1350 (2) The Developer believes that such public street,  
1351 public utility or other public improvement  
1352 provides a material benefit to areas outside the  
1353 boundaries of the Project Area;

1354 then, subject to the provisions of paragraph (d) of this  
1355 Section 4.3, such public street, public utility or public  
1356 improvement shall be deemed a "Public Site Improvement"  
1357 and that portion, and only that portion, of the cost of  
1358 constructing such Public Site Improvement which is  
1359 specifically and uniquely attributable to the Development  
1360 shall be deemed a Project Cost which is to be paid for or  
1361 financed pursuant to the provisions of Article 6 of this  
1362 Agreement.

1363 (c) Not less than 30 days after the Village makes a  
1364 determination pursuant to the foregoing paragraph (a) or  
1365 paragraph (b) that a public street, public utility or  
1366 public improvement must be constructed in order to

1367 further the Economic Development Project and the  
1368 Development, the Village shall deliver notice to the  
1369 Developer identifying:

1370 (1) The public street, public utility or public  
1371 improvement and the basis for the Village's  
1372 determination that such public street, public  
1373 utility or public improvement must be constructed  
1374 in order to further the Economic Development  
1375 Project and the Development;

1376 (2) The Village's determination of the anticipated cost  
1377 of constructing such public street, public utility  
1378 or public improvement;

1379 (3) The Village's determination as to whether or not  
1380 such public street, public utility or public  
1381 improvement provides a material benefit to areas  
1382 outside the boundaries of the Project Area; and

1383 (4) The Village's determination as to the portion of  
1384 the cost of constructing such public street, public  
1385 utility or public improvement which is specifically  
1386 and uniquely attributable to the Development.

1387 (d) If the Developer agrees with the Village's determinations  
1388 made pursuant to the foregoing paragraph (c), then the  
1389 portion of the cost of constructing such public street,  
1390 public utility or public improvement which is  
1391 specifically and uniquely attributable to the Development  
1392 shall be deemed a Project Cost. If the Developer

1393 disagrees with any determination made by the Village  
1394 pursuant to the provisions of this Section 4.3, then the  
1395 following process shall occur:  
1396 (1) The Developer shall deliver notice to the Village  
1397 identifying the specific Village determination with  
1398 which the Developer disagrees;  
1399 (2) The Village, at the Village's cost, shall retain a  
1400 consultant to provide evidence which supports the  
1401 Village's determination and shall submit that  
1402 evidence, with a report that summarizes the  
1403 consultant's methodologies and conclusions, to the  
1404 Developer;  
1405 (3) If the Developer disagrees with such consultant's  
1406 evidence, methodologies or conclusions, then the  
1407 Developer, at the Developer's cost, shall retain a  
1408 consultant to provide evidence which supports the  
1409 Developer's conclusions relative to the Village's  
1410 determination and shall submit that evidence, with  
1411 a report that summarizes such consultant's  
1412 methodologies and conclusions, to the Village; and  
1413 (4) If the Parties are thereafter unable to resolve  
1414 their difference of opinion, then the Village's  
1415 consultant and the Developer's consultant shall  
1416 jointly choose a third consultant, at a cost to be  
1417 shared equally by the Village and the Developer,  
1418 who shall make a final determination as to the

1419 matter in dispute, and such determination shall be  
1420 final and binding on the Parties.

1421 **4.4. Determining "Reasonable or Necessary" Costs**

1422 Determinations of the Parties as to what costs are "reasonable  
1423 or necessary" costs that are incidental to the Economic Development  
1424 Project, as such terms are used in the Act and this Agreement,  
1425 shall be consistent with the provisions of Sections 2.1 and 4.1 of  
1426 this Agreement.

1427 **ARTICLE 5. SPECIAL TAX ALLOCATION FUND**

1428 **5.1. Deposit of Monies into Fund**

1429 In accordance with the Act, the Village Treasurer shall  
1430 promptly deposit in the Special Tax Allocation Fund, upon receipt,  
1431 all Tax Increment Revenues, all other monies required by the Act or  
1432 this Agreement to be deposited in the Fund, and all earnings  
1433 realized upon the investment of such monies. Monies deposited in  
1434 the Fund shall be used only for the purposes, and in the manner,  
1435 specified in this Agreement and the Act.

1436 **5.2. Accounting of Monies Deposited in Fund**

1437 The Village shall establish such accounts and keep such books  
1438 and records as are necessary to implement the provisions of this  
1439 Agreement, the Act and the ordinances adopted in connection with  
1440 each issue of Bonds. From and after the date of this Agreement,  
1441 the Village shall provide the Developer with its annual financial  
1442 report which shall include a statement of monies deposited into and  
1443 disbursed from the Fund. Such report shall be undertaken in  
1444 accordance with generally accepted auditing standards by a

1445 certified public accounting firm designated by the Village. The  
1446 Developer shall have the right to review the books and records of  
1447 the Village which relate to the Fund and any fund or account  
1448 holding proceeds of Revenue Bonds and Notes. At the request of the  
1449 Developer, a separate compliance audit shall be performed to  
1450 provide sufficient detail to enable the Parties to determine  
1451 whether or not there has been compliance with the provisions of  
1452 this Agreement and the Act. Both the accounting records and all  
1453 financial audits of the Fund shall separately identify Phase I Tax  
1454 Increment Revenues and Phase II Tax Increment Revenues. If the  
1455 Developer requests a separate compliance audit of the Fund, the  
1456 cost of such compliance audit shall not be a Village Project Cost  
1457 unless the compliance audit indicates material non-compliance; in  
1458 that event, the cost shall be a Village Project Cost.

1459 **5.3. Investment of Monies Deposited in the Fund**

1460 The Village shall invest monies in the Fund from time to time  
1461 only in those investment vehicles as are identified, as of the date  
1462 of this Agreement, in Section 2 of "An Act Relating to Certain  
1463 Investments of Public Funds by Public Agencies"  
1464 (Ill.Rev.Stat.Ch.85,SS902). All income earned on the investment of  
1465 such monies shall be deposited in the Fund pursuant to Section 5.1  
1466 of this Article 5. The Village shall not transfer or loan monies  
1467 deposited in the Fund to other Village funds.

1468 **ARTICLE 6. PAYMENT AND FINANCING OF PROJECT COSTS**

1469 **6.1. Project Costs Other Than Village Project Costs**

1470 The Village shall pay and finance those Project Costs

1471 identified in Article 4 of this Agreement other than Village  
1472 Project Costs solely from Tax Increment Revenues, the proceeds of  
1473 Obligations, the proceeds of Developer Advances, grants from the  
1474 State of Illinois or other monies made available for such purposes  
1475 pursuant to the Act or the provisions of this Agreement. The  
1476 Village shall reimburse the Developer for the Project Costs  
1477 identified in Article 4 of this Agreement which the Developer has  
1478 paid or incurred out of Tax Increment Revenues or other monies  
1479 deposited in the Fund, the proceeds of Revenue Bonds, or other  
1480 monies made available for such purposes pursuant to the Act or the  
1481 provisions of this Agreement. The foregoing provision shall not  
1482 preclude the Parties, as provided in Article 2 of this Agreement,  
1483 from seeking and securing other funding sources for the  
1484 construction of public improvements which are deemed reasonable or  
1485 necessary to the implementation of the Economic Development Plan  
1486 and the furtherance of the Economic Development Project.

1487 **6.2. Payment and Financing of Village Project Costs**

1488 All Village Project Costs shall be paid out of, or financed  
1489 by, the Village's portion of the Phase I Allocated Tax Increment  
1490 Revenue Amounts (as identified in Column 2 of Exhibit "B" attached  
1491 hereto); those Developer Advances and donations specified in  
1492 Sections 10.1, 10.2 and 10.5 of this Agreement, or the proceeds of  
1493 General Obligation Bonds or Village Obligations secured solely by  
1494 the Village's portion of the Phase I Allocated Tax Increment  
1495 Revenue Amounts. Debt service on Village Obligations which are  
1496 issued to pay Village Project Costs shall be paid solely out of the

1497 Village's portion of the Phase I Allocated Tax Increment Revenue  
1498 Amounts and such other monies as may be available to the Village  
1499 for such purposes. Any portion of the Village's portion of the  
1500 Phase I Allocated Tax Increment Revenue Amounts (as identified in  
1501 Column 2 of Exhibit "B" attached hereto) which is not used or  
1502 encumbered to pay or finance Village Project Costs or to pay such  
1503 debt service shall be paid by the Village to the Cook County  
1504 Collector for distribution to the Village and the affected Taxing  
1505 Districts in accordance with the surplus distribution provisions of  
1506 the Act. The portion of the Phase II Allocated Tax Increment  
1507 Revenue Amounts which are distributed to the Village pursuant to  
1508 Article 7 of this Agreement need not be used by the Village to pay  
1509 or finance Village Project Costs. Notwithstanding any other  
1510 provisions of this Agreement, the estimated three million dollar  
1511 (\$3,000,000.00) cost for constructing the Sanitary Sewer  
1512 Improvements shall not be considered a Village Project Cost  
1513 although the Parties acknowledge the Village's intention to secure  
1514 the "Build Illinois" grant referenced in Section 2.2 of this  
1515 Agreement and the Village's agreement to apply the proceeds of such  
1516 grant, if and when received, to the construction of the Sanitary  
1517 Sewer Improvements. The Developer shall have no obligation to pay  
1518 Village Project Costs, or to make Developer Advances for the  
1519 purpose of paying Village Project Costs, except to the extent  
1520 provided for in Sections 10.1, 10.2 and 10.5 of this Agreement.

1521 **6.3. Issuance of Bonds/Execution and Delivery of Notes**

1522 The Village shall issue Bonds and execute and deliver Notes,

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1523 as necessary to fulfill its obligations under the terms of this  
1524 Agreement, as follows:

1525 (a) From time to time, the Village, in its sole discretion,  
1526 may issue its General Obligation Bonds, and tax increment  
1527 revenue bonds secured solely by the Village's portion of  
1528 the Phase I Allocated Tax Increment Revenue Amounts, in  
1529 amounts sufficient to satisfy and pay for Project Costs,  
1530 including without limitation Village Project Costs.  
1531 Notwithstanding the foregoing, the Village shall not  
1532 issue any General Obligation Bonds until it has received  
1533 the SMG Occupancy Date Notice from the Developer;

1534 (b) From time to time, the Village pursuant to the terms of  
1535 this Agreement and after it has received the SMG  
1536 Occupancy Date Notice from the Developer, shall issue  
1537 economic development project tax increment revenue bonds  
1538 in amounts sufficient to satisfy and pay for the Project  
1539 Costs described in Article 4 of this Agreement other than  
1540 Village Project Costs (but in no event shall private  
1541 financing costs incurred by the Developer in connection  
1542 with the Economic Development Project be paid or  
1543 reimbursed from the proceeds of Revenue Bonds);

1544 (c) To the extent:

1545 (1) The proceeds of Revenue Bonds are not sufficient to  
1546 satisfy, or cannot be used to satisfy, the Project  
1547 Costs described in Article 4 of this Agreement; and

1548 (2) The Tax Increment Revenues (other than the

1549 Allocated Tax Increment Revenue Amounts) then  
1550 deposited in the Fund, are not, and will not be,  
1551 sufficient or available to satisfy such Project  
1552 Costs; and

1553 (3) Such Project Costs do not constitute Village  
1554 Project Costs;

1555 the Developer, to the extent permitted by the Act, shall make a  
1556 Developer Advance to satisfy such Project Costs and the Village  
1557 shall execute and deliver its Note to evidence such Developer  
1558 Advance. Notwithstanding the foregoing, the Developer shall not  
1559 advance, or be required to advance, monies needed to satisfy debt  
1560 service requirements on the Obligations, to establish reserves for  
1561 the debt service requirements of the Obligations or to retire or  
1562 redeem any Obligations and no Developer Advance shall be used for  
1563 such purpose.

1564 **6.4. Limited Liability of the Village**

1565 The Village shall not be required to pay and finance any of  
1566 those Project Costs identified in Article 4 of this Agreement  
1567 (other than Village Project Costs) unless funds for such purposes  
1568 are available from Tax Increment Revenues (other than Allocated Tax  
1569 Increment Revenue Amounts), the proceeds of Obligations, the  
1570 proceeds of Revenue Bonds, the proceeds of Developer Advances,  
1571 grants from the State of Illinois or other monies made available  
1572 for such purposes pursuant to the Act or the provisions of this  
1573 Agreement. The Village shall not be required to reimburse the  
1574 Developer for such Project Costs unless funds for such purposes are

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1575 available from Tax Increment Revenues (other than Allocated Tax  
1576 Increment Revenue Amounts), or other monies deposited from time to  
1577 time in the Fund, the proceeds of Revenue Bonds or other monies  
1578 made available for such purposes pursuant to the Act or the  
1579 provisions of this Agreement.

1580 **6.5. Developer Advances**

1581 All monies paid to the Village by the Developer in furtherance  
1582 of the Economic Development Project and pursuant to the provisions  
1583 of this Agreement shall be accounted for separately within the Fund  
1584 and all such advances shall be deemed Developer Advances, unless  
1585 provided otherwise in this Agreement. All Developer Advances made  
1586 in connection with the incurring of various Project Costs may be  
1587 paid to the Village prior to or subsequent to the incurring of such  
1588 Project Costs. All Developer Advances shall be evidenced by the  
1589 Village's execution and delivery of a Note in accordance with the  
1590 provisions of Article 8 of this Agreement. The Developer shall  
1591 advance the funds necessary to pay any such Project Costs within  
1592 fourteen (14) days of its receipt of a written request therefor  
1593 from the Village Manager. Notwithstanding the foregoing, the  
1594 Developer shall not be required to make any Developer Advance until  
1595 the terms and conditions and the form of the Note which is to be  
1596 executed and delivered to evidence such Developer Advance have been  
1597 agreed upon by the Parties, which terms, conditions and form shall  
1598 be consistent with the terms of this Agreement.

1599 **6.6. Procedure for Payment and Reimbursement to the Developer**  
1600 **of Project Costs**

1601 All payment and reimbursement requests of the Developer in the

1602 amount of four thousand dollars (\$4,000.00) or less, and all  
1603 payment or reimbursement requests of the Developer of more than  
1604 four thousand dollars (\$4,000.00) made pursuant to contracts which  
1605 have been previously approved by the Board of Trustees (whether  
1606 pursuant to this Agreement or otherwise) shall be undertaken  
1607 pursuant to the authorization of the Village Manager. In order to  
1608 effect such payment or reimbursement (whether being made to the  
1609 Developer or others), the Developer shall submit to the Village  
1610 Manager, for his review and approval (which approval shall not be  
1611 unreasonably withheld or delayed), all affidavits, lien waivers and  
1612 other documentation as may be necessary to effect such payment or  
1613 reimbursement. The Village Manager shall inform the appropriate  
1614 Village financial officer of such approval within ten (10) working  
1615 days of receipt of such documentation or, within said period, shall  
1616 provide the Developer with a specific written explanation of his  
1617 reasons for disapproving such request. Such Village financial  
1618 officer shall effect payment or reimbursement within five (5)  
1619 working days of receipt of the Village Manager's approval of any  
1620 request for payment or reimbursement. All payment or reimbursement  
1621 requests of the Developer of more than four thousand dollars  
1622 (\$4,000.00) which are not being made pursuant to a contract which  
1623 has been previously approved by the Board of Trustees shall be  
1624 submitted to the Board of Trustees for its review and approval  
1625 (which approval shall not be unreasonably withheld or delayed).  
1626  
1627

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1628 ARTICLE 7. UTILIZATION OF TAX INCREMENT REVENUES

1629 7.1. Tax Increment Revenues Received Prior to the  
1630 Phase I Tax Increment Revenue Commencement Date.

1631 Prior to the Phase I Tax Increment Revenue Commencement Date,  
1632 the Village from time to time shall disburse or allocate Tax  
1633 Increment Revenues as they are received and deposited in the Fund,  
1634 subject to the provisions of any ordinance authorizing the issuance  
1635 of Revenue Bonds, as follows:

1636 (1) First, the Village shall pay, or allocate amounts  
1637 sufficient to satisfy, debt service requirements  
1638 (and any increases in required reserves) due in the  
1639 current year and coming due in the following year  
1640 on all outstanding Revenue Bonds; and

1641 (2) The balance, if any, shall be reserved by the  
1642 Village to pay Project Costs (other than Village  
1643 Project Costs) to be incurred within the next three  
1644 (3) years and to provide reserves needed to secure  
1645 outstanding Revenue Bonds and Notes.

1646 7.2. Tax Increment Revenues Received On and Subsequent to  
1647 Phase I Tax Increment Revenue Commencement Date.

1648 Commencing with the Phase I Tax Increment Revenue Commencement  
1649 Date and continuing thereafter as Tax Increment Revenues are  
1650 received and deposited in the Fund, the Village from time to time  
1651 shall disburse or allocate Tax Increment Revenues, subject to the  
1652 provisions of any ordinance authorizing the issuance of Revenue  
1653 Bonds, as follows:

1654 (1) First, subject to the last sentence of Section 8.2

1655 of this Agreement, the Village shall: (i) disburse  
1656 or allocate Phase I Allocated Tax Increment Revenue  
1657 Amounts to the Village up to the maximum amounts  
1658 set forth in Column 1 of Exhibit "B" to this  
1659 Agreement; and (ii) disburse or allocate the Phase  
1660 II Allocated Tax Increment Revenue Amounts to the  
1661 Village and the affected Taxing Districts in an  
1662 aggregate amount that is determined by multiplying  
1663 the percentages set forth on Exhibit "C" to this  
1664 Agreement times the amount of Phase II Tax  
1665 Increment Revenues received and deposited in the  
1666 Fund, which Phase II Allocated Tax Increment  
1667 Revenue Amounts shall be distributed to the Village  
1668 and the affected Taxing Districts in accordance  
1669 with the surplus distribution provisions of the  
1670 Act;

1671 (2) Next, the Village shall pay, or allocate amounts  
1672 sufficient to satisfy, debt service requirements  
1673 due in the current year and coming due in the  
1674 following year on all outstanding Revenue Bonds,  
1675 and to provide reserves needed to secure  
1676 outstanding Revenue Bonds;

1677 (3) Next, the Village shall pay, or allocate amounts  
1678 sufficient to satisfy, debt service requirements  
1679 due in the current year and coming due in the  
1680 following year on all outstanding Notes (unless the

1681 holder of such Notes agrees, in writing, to defer  
1682 such payment);

1683 (4) Next, the Village shall pay, or allocate amounts  
1684 sufficient to pay, outstanding Project Costs (other  
1685 than Village Project Costs); and

1686 (5) Next, the Village shall pay, or allocate amounts  
1687 sufficient to pay Project Costs (other than Village  
1688 Project Costs) to be incurred within three (3)  
1689 years, or to purchase or redeem all or a portion of  
1690 the outstanding Notes or Revenue Bonds, as the  
1691 Parties by mutual agreement shall annually  
1692 determine.

1693 (6) The balance, if any, shall be paid to the Cook  
1694 County Collector for distribution to the Village  
1695 and the affected Taxing Districts, for deposit in  
1696 their appropriate accounts, in accordance with the  
1697 surplus distribution provisions of the Act.

1698 **7.3. The Village's Distribution of The Phase I Allocated Tax**  
1699 **Increment Revenue Amounts**

1700 Upon receipt, the Village, subject to the provisions of any  
1701 ordinance authorizing the issuance of General Obligation Bonds, and  
1702 from time to time shall disburse or allocate the Phase I Allocated  
1703 Tax Increment Revenue Amounts as follows:

1704 (1) First, the Village may pay, or allocate an amount  
1705 sufficient to satisfy, debt service requirements  
1706 due in the current year and coming due in the  
1707 following year on any outstanding Village

1708 Obligations;

1709 (2) Next, the Village shall pay, or allocate an amount

1710 sufficient to satisfy, outstanding Village Project

1711 Costs;

1712 (3) Next, the Village shall pay, or allocate an amount

1713 sufficient to reimburse the Village for, Village

1714 Project Costs which have been theretofore paid or

1715 incurred by the Village;

1716 (4) The balance, if any, shall be paid to the Cook

1717 County Collector for distribution to the Village

1718 and the affected Taxing Districts, for deposit in

1719 their appropriate accounts, in accordance with the

1720 surplus distribution provisions of the Act,

1721 provided, however, that the amount of Phase I Tax Increment Revenue

1722 Amounts paid to, or allocated by, the Village annually pursuant to

1723 paragraphs (1), (2), and (3) above shall not exceed the amounts

1724 specified in Column 2 of Exhibit "B" to this Agreement.

1725

1726

1727

1728



1729           **ARTICLE 8.           BONDS AND NOTES**

1730           **8.1. Issuance, Execution and Delivery**

1731           The Parties acknowledge that the acquisition of the Subject  
1732           Property and the Development, and the construction of the Public  
1733           Improvements, as provided in the Economic Development Plan and this  
1734           Agreement, necessitate the use of proceeds from one or more issues  
1735           or series of Revenue Bonds and from the execution and delivery of  
1736           one or more Notes to pay Project Costs as provided in the Economic  
1737           Development Plan and in this Agreement. Accordingly, the Village  
1738           shall issue Revenue Bonds and execute and deliver Notes to finance  
1739           Project Costs pursuant to the Act and the terms of this Agreement.  
1740           Such Revenue Bonds shall be in the aggregate amounts which  
1741           reasonably can be sold based upon the security which can be  
1742           provided to the purchasers of such Revenue Bonds under the  
1743           provisions of this Agreement. Such Revenue Bonds and Notes shall  
1744           not be secured by the full faith and credit of the Village. One or  
1745           more issues or series of Revenue Bonds to pay for Project Costs  
1746           (other than Village Project Costs) may be sold at one or more times  
1747           in order to implement the Economic Development Plan and the  
1748           Economic Development Project, provided that the Village shall not  
1749           be required to issue such Revenue Bonds until necessary credit  
1750           enhancements and security, as may reasonably be deemed necessary by  
1751           the Village, have been established. The amount of each series of  
1752           Revenue Bonds to be issued by the Village shall be supported by a  
1753           feasibility report prepared by, or at the direction of, the  
1754           Developer, which shall reasonably determine the amount of each

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1755 series of such Revenue Bonds which can be issued and which shall be  
1756 satisfactory to the Village. Such report shall analyze the  
1757 projected cash flows (from Tax Increment Revenues and other  
1758 sources), credit enhancements and other security provisions related  
1759 to the issuance of such series of such Revenue Bonds, all then  
1760 outstanding Revenue Bonds and all Revenue Bonds expected to be  
1761 issued thereafter.

1762 **8.2. Interest Payment, Maturity, Priorities and Credit**  
1763 **Enhancements**

1764 All Bonds issued pursuant to this Agreement shall bear  
1765 interest at prevailing market rates for similar instruments and  
1766 shall be subject to such other terms and conditions as are agreed  
1767 to by the Village and the Developer, subject to the Village  
1768 ordinances authorizing issuance of such Bonds and the provisions  
1769 of this Agreement applicable at the time of issuance of the Bonds.  
1770 All taxable Notes executed and delivered pursuant to this Agreement  
1771 shall bear interest at the rate of interest announced from time to  
1772 time by Continental Bank N.A. at Chicago, Illinois, as its "prime  
1773 rate". If, for any reason, Continental Bank N.A. shall cease to  
1774 announce a "prime rate" then such taxable Notes shall bear interest  
1775 at the rate of interest announced from time to time by The First  
1776 National Bank of Chicago at Chicago, Illinois, as its "prime rate"  
1777 or "base rate". The Parties shall agree upon the interest rate to  
1778 apply to any tax-exempt Notes executed and delivered pursuant to  
1779 this Agreement and prior to their execution and delivery. All  
1780 Bonds and Notes shall mature on or before September 11, 2012 and in  
1781 any event within 20 years of the date of issuance or execution and

1782 delivery thereof. All Revenue Bonds issued, and all Notes executed  
1783 and delivered, pursuant to this Agreement shall be limited  
1784 obligations of the Village payable solely from Tax Increment  
1785 Revenues (subject to the last sentence of this Section 8.2) and the  
1786 other monies deposited from time to time in the Fund as a result of  
1787 the investment of such Tax Increment Revenues, as and to the extent  
1788 available for such purposes, and by such capitalized interest, debt  
1789 service reserves and sinking funds or other available credit  
1790 enhancements as may be provided by the ordinances adopted by the  
1791 Village from time to time in conjunction with each issue of Revenue  
1792 Bonds and each delivery of Notes. Revenue Bonds issued and  
1793 outstanding pursuant to this Agreement shall be secured by a first  
1794 priority pledge of amounts in the Fund subsequent and subordinate  
1795 only to the obligation to make the payments due under Section  
1796 7.2(1) (unless the Village shall have agreed upon an alternative  
1797 mechanism to provide for the payments which are otherwise to be  
1798 made under Section 7.2(1).)

1799 **8.3. Tax-Exempt Issues**

1800 The Village, as issuer of the Obligations, and the Developer  
1801 shall cooperate with each other in an attempt to ensure that  
1802 interest paid on the Obligations is exempt from Federal income  
1803 taxes, provided that the Village shall not be required to take any  
1804 action that is inconsistent with the provisions of this Agreement  
1805 or the Village's rights herein.

1806 **8.4. SMG Completion Guaranty Note.**

1807 Upon the Village's issuance of any General Obligation Bonds

pursuant to Section 6.3(a) of this Agreement, the Developer shall execute and deliver to the Village a note guaranteeing substantial completion of the SMG Home Office Complex by the end of the calendar year in which the SMG Occupancy Date is to occur (as established by the SMG Occupancy Date Notice) and providing for the payment to the Village when due of liquidated damages to be agreed upon by the Parties. Notwithstanding the foregoing, the Village shall not issue any General Obligation Bonds until the Village has received the SMG Occupancy Date Notice from the Developer.

**ARTICLE 9. TAX PROTESTS AND APPEALS/PAYMENT OF REAL ESTATE TAXES**

**9.1. Tax Protests and Appeals**

The Parties acknowledge that certain assumptions will be made relative to the future assessed valuations of the Subject Property as and when the Development occurs and as and when Bonds are issued by the Village in connection with the Development. The Parties further acknowledge that attaining and maintaining said assessed valuations will have a material effect on the revenue available to pay debt service on such Bonds. Accordingly, for so long as such Bonds are outstanding, neither the Developer nor its agents, representatives, successors, assigns, tenants or transferees of any portion of the Subject Property shall initiate, take or perform any acts attempting to reduce the assessed valuation of any portion of the Subject Property if such reduction will cause the then-current total assessed valuation of the Subject Property to be less than the Total Minimum Assessed Valuation. The Total Minimum Assessed Valuation of the Subject Property shall be established, in writing,

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1835 by the Parties from time to time as Bonds are issued in connection  
1836 with the development of the Subject Property. The foregoing shall  
1837 not preclude or prohibit the Developer from protesting the assessed  
1838 value of the SMG Home Office Complex for the limited purpose of  
1839 establishing a partial year assessment of the building assessment  
1840 for the year in which the SMG Occupancy Date occurs.

1841 **9.2. Miscellaneous**

1842 Except as otherwise expressly set forth in this Article 9, the  
1843 Developer shall have the same right to challenge real estate taxes  
1844 as is offered to the taxpayers and owners of other real property  
1845 situated within Cook County, Illinois, but no such challenge shall  
1846 be made without notice to the Village. The Developer further  
1847 agrees, that to the extent it is obligated to pay any portion of  
1848 the real estate tax bills for the Subject Property, it shall pay  
1849 such taxes promptly before the date of delinquency of such tax  
1850 bills. The Developer shall file necessary documentation with the  
1851 appropriate governmental authorities in order to cause the Phase I  
1852 Site, the Phase II Site and the PCMT Property to be identified by  
1853 separate permanent tax index numbers so that the provisions of this  
1854 Agreement can be given effect.

1855 **ARTICLE 10. SPECIFIC DEVELOPER ADVANCES AND DONATIONS**

1856  
1857 **10.1. Developer Advance for Costs of Administering the**  
1858 **Economic Development Plan**

1859 The Developer shall advance to the Village the sum of two  
1860 hundred ten thousand dollars (\$210,000) to be used by the Village  
1861 to pay for one (1) new employee and for clerical support to be  
1862 hired specifically for the purpose of implementing and  
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1863 administering the Economic Development Plan and Economic  
1864 Development Project during the period commencing with the date of  
1865 this Agreement and terminating on September 30, 1992. This sum  
1866 shall be advanced to the Village in three (3) equal installments of  
1867 seventy thousand dollars (\$70,000.00) each, with the first  
1868 installment being advanced upon execution of this Agreement; the  
1869 second installment being advanced on November 1, 1990; and the  
1870 third installment being advanced on November 1, 1991. Funds  
1871 advanced to the Village pursuant to this Section 10.1 shall be  
1872 considered Developer Advances. Principal and interest obligations  
1873 coming due on the Notes executed by the Village to evidence such  
1874 Developer Advances shall not be paid out of the Village's portion  
1875 of the Phase I Allocated Tax Increment Revenue Amounts (as  
1876 identified in Column 2 of Exhibit "B" attached hereto).

1877 **10.2. Developer Advance for Police and Fire Personnel**

1878 The Developer shall advance to the Village the sum of one  
1879 million, two hundred twenty-five thousand dollars (\$1,225,000)  
1880 which the Developer agrees shall be used by the Village to pay the  
1881 cost of hiring and training sufficient police officers and  
1882 firefighters in the sole discretion of the Village, to serve the  
1883 Development upon the Developer's occupancy of the SMG Home Office  
1884 Complex. This sum shall be advanced to the Village as follows: an  
1885 initial installment of five hundred twenty-five thousand dollars  
1886 (\$525,000.00) shall be advanced to the Village on January 1, 1991;  
1887 and the balance of seven hundred thousand dollars (\$700,000.00)  
1888 shall be advanced to the Village on January 1, 1992. In addition,

1889 commencing January 1, 1993 and continuing on the first day of each  
1890 month thereafter through and including April 1 of the calendar year  
1891 in which the Phase I Tax Increment Revenue Commencement Date is to  
1892 occur, the Developer shall advance an amount which is not more than  
1893 sixty-three thousand eight hundred dollars (\$63,800.00), which  
1894 amount shall be increased by 10% on January 1, 1994 and by 10% on  
1895 each January 1 thereafter, in order to reimburse the Village for  
1896 police and fire personnel costs incurred by the Village for that  
1897 period of time subsequent to the SMG Occupancy Date established by  
1898 the SMG Occupancy Date Notice through and including April 30 of the  
1899 calendar year in which the Phase I Tax Increment Revenue  
1900 Commencement Date occurs. Notwithstanding the above, the Developer  
1901 shall not be obligated to make monthly payments after January 1,  
1902 1993 for any months wherein the delay of the Phase I Tax Increment  
1903 Revenue Commencement Date is due to breach by the Village as  
1904 provided in Article 17 of this Agreement. Funds advanced to the  
1905 Village pursuant to this Section 10.2 shall be considered Developer  
1906 Advances. Principal and interest obligations coming due on the  
1907 Notes executed by the Village to evidence such Developer Advances  
1908 shall not be paid out of the Village's portion of the Phase I  
1909 Allocated Tax Increment Revenue Amounts (as identified in Column 2  
1910 of Exhibit "B" attached hereto).

1911           **10.3.       Donation of Village Municipal Site**

1912           The Developer shall donate and convey the Village Municipal  
1913 Site to the Village, or cause such donation and conveyance to be  
1914 made to the Village. Such donation and conveyance shall occur not

more than thirty (30) days after the date the Developer, or the Developer's nominee, acquires title to the portion of the Subject Property which contains the Village Municipal Site, and, in any event, such donation and conveyance shall occur prior to issuance of the first building permit for a structure which is to be constructed on the Subject Property. The donation of the Village Municipal Site shall constitute the donation of land required to be made to the Village for municipal purposes pursuant to the Beverly Annexation Agreement.

10.4. Donations Relating to Redevelopment of PCMT Property

(a) Loss of Contracted Service Income.

If, during the Term of this Agreement, the Poplar Creek Music Theater is permanently closed due to the redevelopment of the PCMT Property (hereafter referred to as "closure"), and provided such redevelopment occurs at the request of the Developer, the Developer shall make a one-time donation to the Village of the sum of four hundred fifty thousand dollars (\$450,000.00) for deposit in its general fund to compensate for loss of income to the Village for contracted services. Such donation shall be made on June 1 of the first year following the date of the Poplar Creek Music Theater closure as aforesaid. Funds donated to the Village pursuant to this Section 10.4(a) shall not be considered Developer Advances and such sums shall not be paid out of Tax Increment Revenues or out of the proceeds of Revenue Bonds.



1942 (b) Reductions in Equalized Assessed Value.

1943 If, as a result of the Poplar Creek Music Theater closure  
1944 and the redevelopment of the PCMT Property, provided such  
1945 redevelopment occurs at the request of the Developer, the  
1946 equalized assessed value of that property, during the  
1947 period of redevelopment, falls below the portion of the  
1948 Total Initial Equalized Assessed Value which was  
1949 attributable to the property, the Developer shall pay to  
1950 the Village an amount equal to the Village's loss in real  
1951 property tax revenue occasioned by said closure. Such  
1952 loss in real property tax revenue shall be computed by  
1953 multiplying: (i) the difference between that portion of  
1954 the Total Initial Equalized Assessed Value which was  
1955 attributable to the property and the then equalized  
1956 assessed value of such property; by (ii) the Village's  
1957 real estate tax rate for the applicable tax year. This  
1958 donation shall be recomputed every year and shall  
1959 continue for so long as the Village realizes a loss in  
1960 real property tax revenue as a result of the closure of  
1961 the Poplar Creek Music Theater (as computed above) or  
1962 until this Agreement terminates, whichever first occurs.  
1963 Funds paid to the Village pursuant to this Section  
1964 10.4(b) may be used by the Village for any legal  
1965 purposes. Such funds shall not be considered Developer  
1966 Advances and such funds shall not be paid out of Tax  
1967 Increment Revenues or out of the proceeds of Revenue

1968 Bonds. Notwithstanding the foregoing, no such funds  
1969 shall be paid to the Village unless the Village shall  
1970 first have obtained the opinion of a nationally  
1971 recognized bond counsel that such payment will not affect  
1972 the tax-exempt status of any outstanding Bonds.

1973 (c) Municipal Entertainment Tax.

1974 If, as a result of the closure of the Poplar Creek Music  
1975 Theater and the redevelopment of the PCMT Property,  
1976 provided such redevelopment occurs at the request of the  
1977 Developer, then the Developer shall pay to the Village an  
1978 amount equal to the amount of municipal entertainment tax  
1979 revenue which was realized by the Village in the year  
1980 immediately preceding such closure provided, however,  
1981 that the Developer shall only be required to pay such  
1982 sums to the Village for so long as the Village shall be  
1983 entitled to receive funds under Section 10.4(b). Funds  
1984 paid to the Village pursuant to this Section 10.4(c) may  
1985 be used by the Village for any legal purposes. Such  
1986 funds shall not be considered Developer Advances and such  
1987 funds shall not be paid out of Tax Increment Revenues or  
1988 out of the proceeds of Revenue Bonds.

1989 10.5. Developer Advance for Miscellaneous Village Project  
1990 Costs

1991 The Developer shall advance to the Village, within thirty (30)  
1992 days of the date of this Agreement, the sum of fifty-eight thousand  
1993 three hundred dollars (\$58,300.00) in order to reimburse the  
1994 Village for the fees of Chapman & Cutler (in the amount of

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1995 \$40,000.00) and the fees of Teska & Associates, Inc. (in the amount  
1996 of \$18,300.00), which fees were incurred by the Village in  
1997 establishing the Economic Development Project and preparing the  
1998 Economic Development Plan. Funds advanced to the Village pursuant  
1999 to this Section 10.5 shall be considered a Developer Advance.  
2000 Principal and interest obligations coming due on the Note executed  
2001 by the Village to evidence such Developer Advance shall not be paid  
2002 out of the Village's portion of the Phase I Allocated Tax Increment  
2003 Revenue Amounts (as identified in Column 2 of Exhibit "B" attached  
2004 hereto).

2005 **10.6. No Other Donations**

2006 In consideration of the donations which the Developer has  
2007 agreed to make in accordance with the provisions of this Article  
2008 10, and in further consideration of the fact that the Parties  
2009 contemplate satisfying and financing all public costs of developing  
2010 the Subject Property pursuant to the provisions of this Agreement,  
2011 the Developer shall not be required by the Village, directly or  
2012 indirectly, to make any other donations of land or cash to the  
2013 Village or any other public body as a result of the Development of  
2014 the Subject Property or in furtherance of the Economic Development  
2015 Project. Specifically, but without limitation, the Developer shall  
2016 not be required by the Village: (i) to pay any impact fees for  
2017 Village Project Costs, or for improvements which are to be financed  
2018 pursuant to this Agreement (other than customarily and uniformly  
2019 imposed sewer and water connection and user charges, building and  
2020 occupancy permit fees and engineering inspection and plan review

2021 fees); or (ii) to make any donations of land or cash to the Village  
2022 for school, park, library or other public purposes (whether  
2023 pursuant to the Beverly Annexation Agreement, the Nederlander  
2024 Annexation Agreement, or otherwise).

2025 **ARTICLE 11. NOTICES**

2026 All notices required or permitted to be given pursuant to the  
2027 provisions of this Agreement shall be in writing and shall be  
2028 served on the Parties, either personally, with evidence of receipt,  
2029 or by certified or registered mail, return receipt requested, as  
2030 follows:

2031 **if to the Village:** Village of Hoffman Estates  
2032 1200 North Gannon Drive  
2033 Hoffman Estates, Illinois 60196  
2034 Attn: Village Manager

2035 **with copies to:** Village of Hoffman Estates  
2036 1200 North Gannon Drive  
2037 Hoffman Estates, Illinois 60196  
2038 Attn: Corporation Counsel

2039 Burke & Ryan  
2040 33 North Dearborn Street  
2041 Suite 402  
2042 Chicago, Illinois 60602  
2043 Attn: William E. Ryan, Esq.

2044 **if to the Developer:** Sears, Roebuck and Co.  
2045 Sears Tower  
2046 Chicago, Illinois 60684  
2047 Attn: Senior Vice President  
2048 Resources and Administration,  
2049 Department 707

2050 **with copies to:** Sears, Roebuck and Co.  
2051 Sears Tower  
2052 Chicago, Illinois 60684  
2053 Attn: General Counsel  
2054 Merchandise Group  
2055 Department 766

2056  
2057  
2058  
2059  
2060  
2061  
2062

2063 Tully & Weinstein  
2064 77 West Washington Street  
2065 Suite 1500  
2066 Chicago, Illinois 60602  
2067 Attn: Thomas Tully, Esq.

2068  
2069 and

2070  
2071 Rudnick & Wolfe  
2072 203 North LaSalle Street  
2073 Suite 1800  
2074 Chicago, Illinois 60601  
2075 Attn: J. Kevin Garvey, Esq.  
2076 Harold W. Francke, Esq.  
2077

2078 Either party's address may be changed from time to time by such  
2079 party giving notice, as provided above, to the other party.  
2080 Notices delivered personally shall be deemed given on receipt.  
2081 Notices delivered by certified or registered mail shall be deemed  
2082 given two (2) business days after the date of post-marking.

2083 **ARTICLE 12. MEMORANDUM OF AGREEMENT**

2084 Neither of the Parties shall record this Agreement, but each  
2085 party agrees to execute and to deliver to the other party, when  
2086 this Agreement is executed and delivered, multiple copies of a  
2087 Memorandum of this Agreement in a form acceptable to their  
2088 respective counsel. Either of the Parties, at its sole expense,  
2089 may record such Memorandum in the Office of the Recorder of Deeds  
2090 of Cook County, Illinois. Such Memorandum shall recite the  
2091 covenants contained in Article 9 of this Agreement and such  
2092 covenants shall run with the land and be binding upon the Developer  
2093 and its agents, representatives, successors, assigns, tenants and  
2094 transferees for so long as any Bonds are issued and outstanding.  
2095 If and when the Bonds have been paid in full and redeemed (other  
2096 than by a refunding), the covenants contained in Article 9 of this

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2097 Agreement shall become null and void and the Village shall issue a  
2098 release of such covenants in recordable form and deliver such  
2099 release to the Developer for recording in the Office of the Cook  
2100 County Recorder of Deeds.

2101 **ARTICLE 13. PERMITTED DELAYS**

2102 Neither of the Parties shall be deemed to be in default  
2103 hereunder in the performance of any obligation where delays or  
2104 defaults in such performance are due to war, insurrection, strikes,  
2105 lockouts, riots, floods, earthquakes, fires, casualties, acts of  
2106 God, acts of the public enemy, epidemics, quarantine restrictions,  
2107 freight embargoes and lack of transportation, or the inability to  
2108 secure, or the revocation or suspension of, necessary governmental  
2109 licenses, permits, authorizations and approvals or the failure of  
2110 the other party to this Agreement to keep and perform the covenants  
2111 and obligations on its part to be kept and performed. An extension  
2112 of time for any such cause shall be for the period of the delay,  
2113 which period shall commence to run from the time of the  
2114 commencement of the cause, provided that written notice by the  
2115 party claiming such extension is sent to the other party not more  
2116 than twenty (20) days after the commencement of such cause.

2117 **ARTICLE 14. MORTGAGE HOLDERS**

2118 **14.1. Rights and Obligations**

2119 The holder of any mortgage, deed of trust or other security  
2120 interest, the lessor under any ground lease, and the grantee under  
2121 any other conveyance for financing, shall not be obligated by the  
2122 provisions of this Agreement to construct or complete the

2123 improvements which are contemplated by this Agreement or the  
2124 Economic Development Plan or to guarantee such construction or  
2125 completion, notwithstanding the collateral assignment of this  
2126 Agreement to such party by the Developer. Nothing in this  
2127 Agreement shall be deemed to permit or authorize any such holder,  
2128 lessor or grantee to devote the Subject Property to any uses, or  
2129 to construct any improvements thereon, other than those uses or  
2130 improvements provided for or authorized by this Agreement or the  
2131 Amendment to the Annexation Agreements, any such unauthorized use  
2132 or improvements being expressly prohibited.

2133 **14.2. Notice/Assumption of Obligations**

2134 Whenever the Village shall deliver any notice or demand to the  
2135 Developer with respect to any alleged breach or default by the  
2136 Developer hereunder, the Village, at the same time, shall deliver  
2137 to each holder of record of any mortgage, deed of trust or other  
2138 security interest, and to the lessor of any ground lease and to the  
2139 grantee under any other conveyance for financing, a copy of such  
2140 notice or demand, provided the Village has been advised in writing  
2141 by the Developer, or such holder, lessor, or grantee, of the name  
2142 and address of any such holder, lessor or grantee. Each such  
2143 holder, lessee or grantee (insofar as the rights of the Village are  
2144 concerned) shall have the same right to cure or remedy, or to  
2145 commence to cure or remedy, any such default, provided, however,  
2146 that in the event of a default by the Developer hereunder which is  
2147 not curable by such holder, lessor or grantee (e.g., insolvency or  
2148 bankruptcy of the Developer), such holder, lessor or grantee shall

2149 be deemed to have cured such noncurable defaults by its execution  
2150 of the assumption agreement contemplated in the later portions of  
2151 this Section 14.2. Nothing contained in this Agreement shall be  
2152 deemed to permit or authorize such holder, lessor or grantee to  
2153 undertake or continue the construction or completion of the  
2154 improvements contemplated by this Agreement (beyond the extent  
2155 necessary to conserve or protect the improvements or construction  
2156 already made) without first having expressly assumed the  
2157 Developer's obligations (with respect to the portion of the Subject  
2158 Property on which the holder, lessor or grantee has a security  
2159 interest) to the Village by written agreement satisfactory to the  
2160 Village. In such event, the holder, lessor or grantee shall agree  
2161 to complete, in the manner provided in this Agreement, the  
2162 improvements to which the security interest of such holder, lessor  
2163 or grantee relates, and submit evidence satisfactory to the Village  
2164 that it has the qualifications and financial responsibility  
2165 necessary to perform such obligations. The assumption agreement  
2166 shall provide that such holder, lessor or grantee shall only be  
2167 deemed to have assumed the Developer's obligations for as long as  
2168 they have a security interest in the Subject Property, and that the  
2169 Village's sole and exclusive remedy for a breach of the assumption  
2170 agreement is forfeiture of the equity interest of such holder,  
2171 lessor or grantee in the Subject Property. No such assumption  
2172 agreement shall relieve the Developer of any of its obligations  
2173 under this Agreement. Any such holder, lessor or grantee properly  
2174 completing such improvement shall be entitled, upon written request



2175 made to the Village, to a certificate of occupancy from the Village  
2176 with respect to such improvements. To the extent of a conflict,  
2177 ambiguity or inconsistency between the provisions of this Section  
2178 14.2 and the provisions of any underlying agreement between the  
2179 Developer and a holder, lessor or grantee of any security interest  
2180 in the Subject Property, the former shall control.

2181 **14.3. Village Right to Cure Defaults**

2182 In the event the Developer, or any entity acquiring title to  
2183 the Subject Property, or any portion thereof, defaults in the  
2184 construction or completion of construction of the improvements  
2185 contemplated by the provisions of this Agreement, and such default  
2186 is also a default under any mortgage, deed of trust, other security  
2187 instrument or lease-back or obligation to the grantee under any  
2188 other conveyance for financing, and the holder, lessor or grantee,  
2189 as the case may be, elects not to exercise its option to cure such  
2190 default, the Village may cure such default, or cause the same to be  
2191 cured, prior to completion of any foreclosure, termination of lease  
2192 or other remedial proceeding as a result of such default. In such  
2193 event, the Village, or its nominee, shall be entitled to  
2194 reimbursement from the Developer, or such other entity, of all  
2195 reasonable costs and expenses incurred by the Village in curing the  
2196 default (including reasonable attorney's fees). The Village shall  
2197 also be entitled to a lien upon the Subject Property to the extent  
2198 of such reasonable costs and expenses (including reasonable  
2199 attorneys' fees). Any such lien shall be subject to the lien of  
2200 the mortgages, deeds of trust and other security instruments, and

2201 to the prior interests of a lessor under any lease-back or ground  
2202 lease, executed for the purpose of obtaining funds to purchase or  
2203 develop the Subject Property, to construct the improvements  
2204 contemplated by this Agreement, to finance the costs of such  
2205 construction or to pay the costs reasonably related to the  
2206 Developer's performing its obligations under this Agreement.

2207 **ARTICLE 15. NO DISCRIMINATION-CONSTRUCTION**

2208 The Developer, in connection with the development of the  
2209 Subject Property, shall not discriminate against any employee or  
2210 applicant for employment because of race, color, religion, sex or  
2211 national origin. The Developer shall take affirmative action to  
2212 require that applicants are employed, and that employees are  
2213 treated during employment, without regard to their race, color,  
2214 religion, sex or national origin. Such action shall include, but  
2215 not be limited to, the following: employment upgrading, demotion,  
2216 or transfer; recruitment or recruitment advertising, solicitations  
2217 or advertisements for employees; layoff or termination; rates of  
2218 pay or other forms of compensation; and selection for training,  
2219 including apprenticeship. The Developer agrees to post in  
2220 conspicuous places, available to employees and applicants for  
2221 employment, notices which may be provided by the Village setting  
2222 forth the provisions of this non-discrimination clause.

2223 **ARTICLE 16. NO DISCRIMINATION-USE**

2224 The Developer shall not discriminate against any person, or  
2225 group of persons, on account of sex, race, color, religion or  
2226 national origin in the sale, lease, sublease, transfer, use,

2227 occupancy, tenure or enjoyment of the Subject Property, nor shall  
2228 the Developer establish or permit, or knowingly allow any person  
2229 claiming under or through the Developer to establish or permit, any  
2230 such practice or practices of discrimination with reference to the  
2231 selection, location, number, use, or occupancy of tenants, lessees,  
2232 subtenants, sublessees, or vendees of any portion of the Subject  
2233 Property.

2234 **ARTICLE 17. REMEDIES-LIABILITY**

2235 **17.1. Developer Remedies**

2236 The sole remedies of the Developer in the event of a breach by  
2237 the Village in any of the terms of this Agreement shall be: (i) to  
2238 institute legal action for specific performance, mandamus or  
2239 mandatory injunction against the Village (including the right to  
2240 require the Village to make any payment required to be made by this  
2241 Agreement and to issue Revenue Bonds); and (ii) to maintain an  
2242 action at law for the Developer's actual (but not consequential or  
2243 punitive) damages, provided, however, that such right to maintain  
2244 an action for actual damages shall be limited to a Village default  
2245 in the performance of one or more of the following Village  
2246 obligations, which default results in a breach of the terms of this  
2247 Agreement:

- 2248 (a) The obligation to issue Revenue Bonds, to the extent and  
2249 when provided for by the provisions of this Agreement;  
2250 (b) The obligation to make payments to the Developer or  
2251 others on construction contracts which have been approved  
2252 by the Board of Trustees pursuant to the provisions of

2253 this Agreement; and

2254 (c) The obligation to reimburse the Developer for Project  
2255 Costs which the Developer has paid or incurred, to the  
2256 extent and when provided for by the provisions of this  
2257 Agreement.

2258 In the event the Developer obtains a final non-appealable judgment  
2259 against the Village for either legal or equitable relief as  
2260 provided above, as a result of a breach of this Agreement by the  
2261 Village, the Developer shall be entitled to recover the reasonable  
2262 attorneys fees and court costs it has incurred in securing such  
2263 judgment.

2264 Notwithstanding the foregoing, the Developer shall have the  
2265 right to terminate this Agreement at any time before it occupies  
2266 any part of the SMG Home Office Complex upon paying the Village all  
2267 costs, expenses, claims, liabilities and all fees including  
2268 attorneys fees that the Village has incurred that relate directly  
2269 to the creation of the Economic Development Project, the  
2270 preparation and adoption of the Economic Development Plan and this  
2271 Agreement, as more fully set forth in Article 20.

2272 17.2. Village Remedies

2273 The Village shall have all remedies at law or equity against  
2274 the Developer for any breach by the Developer in any of the terms  
2275 of this Agreement including the right to reasonable attorneys fees  
2276 and court costs, subject to the Developer's right to terminate this  
2277 Agreement as set forth in Section 17.1. Notwithstanding the  
2278 foregoing, the Village shall not have the right to maintain an

2279 action against the Developer for consequential or punitive damages.

2280 17.3. Defaults-Rights to Cure

2281 Subject to the extensions of time set forth in Article 13 of  
2282 this Agreement, failure or delay by either party to perform any  
2283 term or provision of this Agreement shall constitute a default  
2284 under this Agreement. The party who so fails or delays must, upon  
2285 receipt of written notice of the existence of such default,  
2286 immediately commence to cure, correct or remedy such default and  
2287 thereafter proceed with diligence to cure such default. The party  
2288 claiming such default shall give written notice of the alleged  
2289 default to the party alleged to be in default specifying the  
2290 default complained of by the injured party. Except as required to  
2291 protect against further damages, and except as otherwise expressly  
2292 provided in this Agreement, the injured party may not institute  
2293 proceedings against the party in default until thirty (30) days  
2294 after giving such notice. If such default is cured within such  
2295 thirty (30) day period, the default shall not be deemed to  
2296 constitute a breach of this Agreement. If the default is one which  
2297 cannot reasonably be cured within thirty (30) days, and if the  
2298 defaulting party shall commence to cure the same within such thirty  
2299 (30) day period, said thirty (30) day period shall be extended for  
2300 such time as is reasonably necessary for the curing of the same, so  
2301 long as the defaulting party diligently proceeds to cure such  
2302 default. If such default is cured within such extended period, the  
2303 default shall not be deemed to constitute a breach of this  
2304 Agreement. However, a default not cured as provided above shall

2305 constitute a breach of this Agreement. Except as otherwise  
2306 expressly provided in this Agreement, any failure or delay by  
2307 either party in asserting any of its rights or remedies as to any  
2308 default or alleged default or breach shall not operate as a waiver  
2309 of any such default or breach or any rights or remedies it may have  
2310 as a result of such default or breach.

2311 **17.4. Acts and Omissions of Default**

2312 At the option of the Village, each of the following acts or  
2313 omissions of the Developer shall constitute a default under this  
2314 Agreement:

2315 (a) The Developer transfers, or suffers any involuntary  
2316 transfer of, the Subject Property in violation of the  
2317 terms of Article 18 of this Agreement;

2318 (b) The Developer files a petition seeking any debtor relief  
2319 or executes any instrument for the purpose of effecting  
2320 a composition of creditors;

2321 (c) The Developer makes an assignment for the benefit of  
2322 creditors; or

2323 (d) The Developer is adjudicated as bankrupt.

2324 **17.5. Dispute Resolution**

2325 (a) If, at any time during the Term of this Agreement, the  
2326 Parties do not agree on any of the following three  
2327 issues:

2328 (i) Whether or not a given Project Cost which is  
2329 to be paid or financed pursuant to the terms  
2330 of this Agreement is "reasonable or necessary"

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2331 to the Economic Development Project;

2332 (ii) Whether a given Project Cost constitutes a

2333 Village Project Cost; or

2334 (iii) Whether the Parties have fulfilled their

2335 respective obligations under this Agreement

2336 relative to the issuance of Revenue Bonds;

2337 then, at the option of either the Village or the

2338 Developer, the Parties shall attempt to resolve such

2339 disagreement pursuant to the provisions of this Section

2340 17.5. If either the Village or the Developer seeks to

2341 exercise such option, notice of such election shall be

2342 given to the other party within thirty (30) days of the

2343 date it first becomes apparent to the Parties that such

2344 disagreement exists.

2345 (b) If, pursuant to the provisions of the foregoing paragraph

2346 (a), either of the Parties shall seek to resolve a

2347 disagreement that pertains to one of the issues described

2348 in said paragraph (a), such party shall select an expert,

2349 at such party's cost, who shall have the responsibility

2350 to consider the issue in dispute and render an opinion,

2351 within twenty-one (21) days, relative to the resolution

2352 of such disagreement. If, following the receipt of such

2353 opinion, the other party wishes to retain its own expert,

2354 such other party shall have the right to do so, at such

2355 party's cost, and, in such event, such expert shall also

2356 proceed to consider the issue in dispute and render an

2357 opinion, within twenty-one (21) days, relative to the  
2358 resolution of such disagreement. If, after receipt of  
2359 the foregoing opinions, the Parties are still unable to  
2360 resolve their disagreement, the Parties' respective  
2361 experts shall jointly designate a third expert, at a cost  
2362 to be shared equally by the Parties, who shall have the  
2363 responsibility to consider the issue in dispute and  
2364 render such expert's opinion, within twenty-one (21)  
2365 days, relative to the resolution of such disagreement.  
2366 None of the opinions rendered by any of the foregoing  
2367 experts shall be binding on the Parties unless both  
2368 Parties agree otherwise.

2369 (c) Either of the Parties shall have the right, after  
2370 completing the procedure provided for in paragraph (b)  
2371 above, to seek the resolution of a disagreement in a  
2372 trial de novo before the Circuit Court of Cook County.  
2373 No damages (actual, consequential or punitive) shall be  
2374 claimed by either of the Parties during the period the  
2375 Parties are attempting to resolve, or as a result of the  
2376 Parties' attempt to resolve, a disagreement pursuant to  
2377 the provisions of the foregoing paragraph (b).

2378 **17.6. Right to Continue Construction Activities**

2379 The Parties acknowledge that one of the primary objectives of  
2380 this Agreement is the Developer's timely completion of the SMG Home  
2381 Office Complex. Accordingly, the Village shall not take any action  
2382 to delay, hinder or prevent the construction of the SMG Home Office



2383 Complex, or the construction of any of the Public Site  
2384 Improvements, notwithstanding any actual or alleged breach or  
2385 default by the Developer in any of the obligations imposed on the  
2386 Developer by the terms of this Agreement that relate to the payment  
2387 or financing of Project Costs, and notwithstanding the pendency of  
2388 any dispute resolution or court proceeding under Section 17.5  
2389 hereof. The foregoing shall not preclude the Village from taking  
2390 any action against the Developer in the event of a violation of any  
2391 law, ordinance or regulation or the exercise of the Village's  
2392 police powers in the public interest.

2393 ARTICLE 18. ASSIGNMENT OF DEVELOPER RIGHTS AND  
2394 OBLIGATIONS/CONVEYANCES OF THE SUBJECT PROPERTY

2395 18.1. Assignment of Developer Rights and Obligations

2396 The rights and obligations of the Developer under this  
2397 Agreement shall not be assigned except as provided by this Section  
2398 18.1.

2399 (a) The term "Developer", as used in this Section 18.1, shall  
2400 mean only:

2401 (i) Sears, Roebuck and Co., a New York  
2402 corporation;

2403 (ii) Any entity which is a parent, controlling  
2404 shareholder (i.e. owning fifty-one percent  
2405 (51%) or more of the capital stock), or fifty-  
2406 one percent (51%) or more owned subsidiary of  
2407 Sears, Roebuck and Co.;

2408 (iii) Any entity which is owned, to the extent of at  
2409 least a fifty-one percent (51%) controlling

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2410 interest, by Sears, Roebuck and Co. or an  
2411 entity described in the foregoing paragraph  
2412 (ii); and

2413 (iv) Any entity to whom the Developer has conveyed  
2414 a portion of the Subject Property consisting  
2415 of one hundred (100) acres or more and  
2416 assigned its rights under this Agreement  
2417 pursuant to Section 18.2.

2418 (b) Except as provided in paragraph (c) of this Section 18.1,  
2419 all rights of the Developer established by the terms of  
2420 this Agreement shall inure solely to the benefit of the  
2421 Developer and shall not be subject to assignment by the  
2422 Developer and, specifically but without limitation, the  
2423 Village shall not be required to issue Revenue Bonds in  
2424 order to satisfy and pay for Project Costs except for the  
2425 Developer.

2426 (c) The following rights established by the terms of this  
2427 Agreement shall inure to the benefit of: (i) the  
2428 Developer; and (ii) any assignee of such rights acquiring  
2429 an ownership interest in the Subject Property pursuant to  
2430 a sale or conveyance of a portion of the Subject Property  
2431 (or pursuant to an assignment of an interest in a  
2432 corporation, partnership or land trust) that does not  
2433 violate Section 18.2 of this Agreement:

2434 (i) The right to have costs incurred in  
2435 furtherance of the Economic Development Plan

2436 and the Development deemed Project Costs (to  
2437 the fullest extent permitted by law) and,  
2438 subject to the rights of holders of any  
2439 Obligations and subject to the provisions of  
2440 paragraph (b) above, to have such Project  
2441 Costs paid for, financed or reimbursed  
2442 pursuant to Article 6 of this Agreement;  
2443 (ii) The right to challenge real estate taxes (as  
2444 provided in Section 9.2 of this Agreement);  
2445 (iii) The right to develop the Subject Property  
2446 without regard to then existing Village  
2447 donation requirements (as provided in Section  
2448 10.6 of this Agreement);  
2449 (iv) The right to maintain an action against the  
2450 Village and to only recover reasonable  
2451 attorneys fees and court costs from the  
2452 Village in the event of a Village default  
2453 under the provisions of this Agreement (as  
2454 provided in Section 17.1 of this Agreement);  
2455 and  
2456 (v) The right to sell, convey, mortgage, lease and  
2457 otherwise transfer interests in and to the  
2458 Subject Property (subject to the limitations  
2459 of, and as provided for in, Section 18.2 of  
2460 this Agreement).  
2461 (d) Except as provided in paragraph (e) of this Section 18.1,

2462 all obligations, including Developer's indemnification  
2463 obligations under Article 20 of this Agreement, of the  
2464 Developer established by the terms of this Agreement  
2465 shall be solely the obligations of the Developer.

2466 (e) With respect to the development of the various portions  
2467 of the Subject Property, the following obligations shall  
2468 be the obligations of the party or entity undertaking  
2469 such development or causing such development to be  
2470 undertaken:

2471 (i) The obligation to devote such portion of the  
2472 Subject Property as is being developed to only  
2473 the uses specified in the Economic Development  
2474 Plan (as provided in Section 3.4 of this  
2475 Agreement);

2476 (ii) The obligation to procure and maintain  
2477 insurance covering construction on such  
2478 portion of the Subject Property (as provided  
2479 in Section 3.5 of this Agreement);

2480 (iii) The obligation to submit plats and plans, and  
2481 to undertake construction, in accordance with  
2482 the codes and ordinances of the Village (as  
2483 provided in Section 3.6 of this Agreement);

2484 (iv) The obligation to refrain from protesting real  
2485 estate taxes or assessed valuations of the  
2486 Subject Property (as provided in Section 9.1  
2487 of this Agreement);

2488 (v) The obligation to grant and provide  
2489 dedications, easements and rights of way  
2490 necessary to the development of such portion  
2491 of the Subject Property (as provided in  
2492 Article 19 of this Agreement); and  
2493 (vi) The obligation to indemnify the Village  
2494 against costs and expenses incurred by the  
2495 Village as a result of construction activities  
2496 on such portion of the Subject Property and as  
2497 a result of the negligence of general  
2498 contractors, subcontractors and their  
2499 respective employees (as provided in Article  
2500 20 of this Agreement).

2501 18.2. Conveyances of the Subject Property

2502 The Developer shall have the right to sell, convey, mortgage,  
2503 lease and otherwise transfer interests in and to the Subject  
2504 Property without limitation and without the approval of the Village  
2505 provided, however, that:

2506 (a) The Developer shall not sell or transfer any interest in  
2507 and to that portion of the Phase I Site on which the SMG  
2508 Home Office Complex is to be constructed until issuance  
2509 by the Village of the first occupancy permit for the SMG  
2510 Home Office Complex and until after the Developer's  
2511 Merchandise Group, or another entity, division or group  
2512 controlled or owned by Developer, shall have occupied the  
2513 SMG Home Office Complex for at least ten (10) years

2514 following the SMG Occupancy Date; and

2515 (b) If:

2516 (1) The Developer seeks to sell, transfer or convey any

2517 portion of the Subject Property consisting of one

2518 hundred (100) acres or more; and

2519 (2) The Developer seeks to be relieved of liability

2520 under this Agreement with respect to such portion

2521 of the Subject Property; and

2522 (3) Bonds are outstanding;

2523 then the Village shall have the right to require that any

2524 purchaser/grantee of such portion of the Subject Property

2525 satisfy the following conditions and meet the following

2526 standards:

2527 (i) Any such purchaser/grantee shall have the

2528 experience and financial responsibility

2529 necessary to fulfill the Developer's

2530 obligations under this Agreement (to the

2531 extent applicable to such portion of the

2532 Subject Property);

2533 (ii) Any such purchaser/grantee shall have expressly

2534 assumed, in writing, the Developer's

2535 obligations under this Agreement (to the

2536 extent applicable to such portion of the

2537 Subject Property);

2538 (iii) All instruments confirming the matters

2539 specified in the foregoing paragraphs (i) and

2540 (ii) Shall be submitted to the Village for  
2541 review and approval (which approval shall not  
2542 be unreasonably withheld or delayed).

2543 Upon the occurrence of a sale or conveyance that satisfies the  
2544 foregoing conditions and meets the foregoing standards, the  
2545 Developer shall be relieved of all liability under this Agreement  
2546 (to the extent applicable to such portion of the Subject Property).  
2547 No conveyance of a portion of the Subject Property consisting of  
2548 one hundred (100) acres or more that fails to satisfy the foregoing  
2549 conditions or meet the foregoing conditions, shall be deemed to  
2550 relieve the Developer of any of its obligations under this  
2551 Agreement with respect to such portion of the Subject Property.

2552 The provisions of this Section 18.2 are intended to be  
2553 applicable to a sale and assignment of a beneficial interest in a  
2554 land trust, a sale and assignment of partnership interests, a sale  
2555 and transfer of capital stock in a corporation, and other  
2556 comparable transactions which would effectively frustrate the  
2557 spirit and intent of these provisions. However, the provisions of  
2558 this Section 18.2 are not intended to preclude or be applicable to,  
2559 and such provisions shall not preclude or be applicable to, the  
2560 financing, refinancing, sale-leaseback or leasing of any portion of  
2561 the Subject Property by the Developer; the sale or transfer of any  
2562 interest in and to the Subject Property to an entity controlled or  
2563 owned by the Developer; or an assignment of a beneficial interest  
2564 in a land trust to, the assignment of partnership interests to, or  
2565 the transfer of capital stock in a corporation to an entity

2566 controlled or owned by the Developer. Any entity in which the  
2567 Developer holds more than a fifty percent (50%) interest shall be  
2568 considered to be controlled or owned by the Developer for purposes  
2569 of this Section 18.2.

2570 18.3. The terms and provisions of this Agreement shall be  
2571 binding upon and inure to the benefit of the Corporate Authorities  
2572 (including successor Corporate Authorities).

2573 ARTICLE 19. DEDICATIONS AND EASEMENTS

2574 The Developer, at no cost to the Village, shall grant and  
2575 provide all reasonable street dedications and permanent and  
2576 temporary easements and rights-of-way reasonably requested by the  
2577 Village in connection with the Development, including, but not  
2578 limited to, easements and rights-of-way for vehicular access,  
2579 pedestrian access, parking facilities, sanitary sewers, storm  
2580 drains, water lines, street lighting, and electrical power,  
2581 telephone, cable TV and natural gas lines.

2582 ARTICLE 20. DEVELOPER INDEMNIFICATION

2583 (a) The Developer shall indemnify and hold harmless the  
2584 Village, its agents, officers and employees, against all  
2585 injuries, deaths, losses, damages, claims, suits,  
2586 liabilities (including any liability under the Illinois  
2587 Structural Work Act, known as the Scaffolding Act),  
2588 judgments, costs and any reasonable expenses of  
2589 consultants, lawyers and other reasonable expenses of any  
2590 type, except Village Project Costs, that are directly or  
2591 indirectly related to the creation of the Economic

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2592 Development Project, the preparation or adoption of the  
2593 Economic Development Plan and this Agreement, including,  
2594 but not limited to any breach of the terms of this  
2595 Agreement by the Developer; the sale and use of any Bonds  
2596 pursuant to this Agreement (other than General Obligation  
2597 Bonds and other Village Obligations secured solely by the  
2598 Village's portion of the Allocated Tax Increment Revenue  
2599 Amounts); the Developer's improvement of the Subject  
2600 Property and construction of the Development, and from  
2601 any negligence or reckless misconduct of the Developer,  
2602 its general contractor or its employees and agents, or of  
2603 a subcontractor of the general contractor or his  
2604 employees, if any, in connection therewith, and the  
2605 Developer shall, at its own expense, appear, defend and  
2606 pay all charges of attorneys and costs and other expenses  
2607 arising therefrom or incurred in connection with any  
2608 claim for which the Developer is responsible hereunder,  
2609 and, if any judgment shall be rendered against the  
2610 Village, its agents, officials or employees in any such  
2611 action involving any claim for which the Developer is  
2612 responsible hereunder, the Developer shall, at its own  
2613 expense, satisfy and discharge the same. The Developer  
2614 expressly understands and agrees that the insurance  
2615 protection required by Section 3.5 of this Agreement  
2616 shall in no way limit the responsibility to indemnify,  
2617 hold harmless and defend as herein provided in this

2618 Article 20, but to the extent a particular claim, action  
2619 or liability is covered by such insurance, the Developer  
2620 shall be released of liability hereunder.

2621 (b) The indemnification obligations of the Developer  
2622 contained in the foregoing paragraph (a) shall not extend  
2623 to injuries, deaths, losses, damages, claims, suits,  
2624 liabilities, judgments, costs and expenses incurred as a  
2625 result of or arising out of: (i) the negligence or  
2626 reckless misconduct of the Village, its officers, agents,  
2627 employees and contractors; (ii) obligations which the  
2628 Village has agreed to pay or incur pursuant to the  
2629 provisions of this Agreement; (iii) the Village's breach  
2630 in any of the terms of this Agreement; (iv) the Village's  
2631 construction of the Public Works and Improvements and the  
2632 Sanitary Sewer Improvements; and (iv) the Village's  
2633 improvement and use of the Village Municipal Site.

2634 **ARTICLE 21. AMENDMENT/INTEGRATION**

2635 This Agreement, and any exhibits attached hereto, may be  
2636 amended only by the mutual consent of the Parties with, on the part  
2637 of the Village, the adoption of an ordinance or resolution of the  
2638 Board of Trustees approving said amendment, as provided by law, and  
2639 by the execution of said amendment by the Parties or their  
2640 successors in interest. The Amendment to the Annexation Agreements  
2641 and this Agreement, when both are fully executed by the Parties,  
2642 shall constitute the entire understanding and agreement of the  
2643 Parties relative to the subject matter hereof superseding all prior

2644 agreements, negotiations and discussions relative to such subject  
2645 matter. All exhibits to this Agreement are expressly incorporated  
2646 herein by this reference thereto.

2647 **ARTICLE 22. DUPLICATE ORIGINALS**

2648 This Agreement is executed in four (4) duplicate originals,  
2649 each of which is deemed to be an original.

2650 **ARTICLE 23. TIME IS OF THE ESSENCE**

2651 Time is of the essence of this Agreement.

2652 **ARTICLE 24. TERM**

2653 This Agreement shall remain in full force and effect until  
2654 termination of the Project Area and the Economic Development Plan  
2655 or until otherwise terminated pursuant to the terms hereof.

2656 **ARTICLE 25. INTERPRETATION**

2657 The laws of the State of Illinois shall govern the  
2658 interpretation and enforcement of the terms and provisions of this  
2659 Agreement.

2660 **ARTICLE 26. SEVERABILITY.**

2661 In the event any phrase, paragraph, article or portion of this  
2662 Agreement is found to be invalid, illegal or unenforceable by any  
2663 court of competent jurisdiction, such finding of invalidity,  
2664 illegality or unenforceability as to that phrase, paragraph,  
2665 article or portion shall not affect the validity, legality or  
2666 enforceability of the remaining portions of this Agreement.

2667 **ARTICLE 27. CAPTIONS AND PRONOUNS.**

2668 The captions and headings of the various articles and sections  
2669 of this Agreement are for convenience only, and are not to be

2670 construed as confining, defining, expanding or limiting in any way  
2671 the scope or intent of the provisions hereof. Whenever the context  
2672 requires or permits, the singular shall include the plural, the  
2673 plural shall include the singular, and the masculine, feminine and  
2674 neuter shall be freely interchangeable.  
2675

2676           **IN WITNESS WHEREOF** this Agreement has been duly authorized and  
2677 approved by the President and Board of Trustees of the Village of  
2678 Hoffman Estates, Cook and Kane Counties, Illinois, and executed by  
2679 the Parties as of the day and year first above set forth.

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**ATTEST:**

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**ATTEST:**

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**VILLAGE:**

**VILLAGE OF HOFFMAN ESTATES**, an  
Illinois home rule municipal  
corporation

By: Michael J. O'Malley  
Its: Village President

By: Virginia Mary Hayter  
Its: Village Clerk  
(Seal)

**DEVELOPER:**

**SEARS, ROEBUCK AND CO.**, A New  
York corporation

By: Michael J. Bojko  
Its: Chairman and Chief  
Executive Officer  
Merchandise Group

APPROVED: D

By: D. J. Jeruc  
Its: Assistant Secretary  
(Seal)

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LIST OF EXHIBITS

EXHIBIT A	Summary of Acquisition Contracts
EXHIBIT B	Phase I - Allocated Tax Increment Revenue Amounts
EXHIBIT C	Phase II - Allocated Tax Increment Revenue Amounts
EXHIBIT D	Legal Description of the Phase I Site
EXHIBIT E	Legal Description of the Phase II Site
EXHIBIT F	Legal Description of the Hoffman Estates Economic Development Project Area
EXHIBIT G	Depiction of the Hoffman Estates Economic Development Project Area
EXHIBIT H	Phase I Development Public Site Improvements
EXHIBIT I	Phase II Development Public Site Improvements
EXHIBIT J	Public Works and Improvements
EXHIBIT K	General Depiction of Portion of Phase I Site to Contain SMG Home Office Complex
EXHIBIT L	SMG Occupancy Date Notice
EXHIBIT M	Legal Description of Subject Property
EXHIBIT N	Contracts in Existence or To Be Let by the Developer
EXHIBIT O	Property Assembly Costs Paid, Incurred, or Known by the Developer as of the Date of this Agreement
EXHIBIT P	Project Costs Paid or Incurred by the Developer as of the Date of this Agreement in Connection with Construction of the Public Site Improvements

**EXHIBIT A**

**SUMMARY OF ACQUISITION CONTRACTS**

**1. Origer Property - Two (2) Contracts - Approximately 520 acres**

I. Date of Contracts: June 23, 1989

II. Owners:

1. Approximately 360 acres are owned by two (2) land trusts having as beneficiary The Thomas J. Origer Inter-Vivos Trust;
2. Approximately 160 acres are owned by two (2) land trusts with beneficial owners being the children of Thomas J. Origer (seven individuals).

III. Purchase Price:

1. \$ \* per square foot;
2. \$ \* (in the aggregate)

IV. Closing Date: The thirtieth (30th) day following the earlier to occur of: (i) satisfaction of zoning contingency; and (ii) June 23, 1990. If extended the Closing Date shall be no later than October 24, 1990.

**B. Nederland Property - Two (2) Contracts - Approximately 221 acres**

I. Date of Contracts: June 24, 1989.

II. Owner: LaSalle National Bank Trust No. 54757 having as beneficiary Ned-Prop, an Illinois joint venture.

III. Purchase Price:

1. \$ \* per square foot;
2. \$ \* (in the aggregate)

IV. Closing Date: The thirtieth (30th) day following the earlier to occur of: (i) satisfaction of zoning contingency; and (ii) June 25, 1990. If extended the Closing Date shall be no later than September 24, 1990.

V. Leaseback: Poplar Creek Music Theatre is to be leased to the Seller at closing for an initial period (with renewal rights provided it does not interfere with Sears' development) for a rent of \$1.00 per year.

\* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

C. Studz Property - Approximately 40 acres

- I. Date of Contract: June 25, 1989
- II. Owner: Charter Bank and Trust Company Trust No. 769 having as beneficiary Ruth Studz
- III. Purchase Price:
  1. \$ \* per square foot (based on 40 acres);
  2. \$ \* (in the aggregate)
- IV. Closing Date: the thirtieth (30th) day following the earlier to occur of: (i) satisfaction of zoning and annexation contingency; and (ii) June 25, 1990. If extended the Closing Date shall be no later than October 24, 1990.

D. "Watson" Property - Approximately 7 acres

- I. Date of Contract: June 26, 1989
- II. Owner: Sutton Road Partnership, an Illinois general partnership (Contract Buyer)
- III. Purchase Price:
  1. \$ \* per square foot
  2. \$ \* in the aggregate
- IV. Closing Date: Property was acquired on September 7, 1989.

E. Totals:

Acreage: Approximately 788 acres

Purchase Price: Approximately \$ \* or \$ \* per square foot

\* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

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**EXHIBIT B**

**PHASE I**  
**ALLOCATED TAX INCREMENT REVENUE AMOUNTS**

<b><u>YEAR</u></b>	<b><u>COLUMN 1</u></b> <b>Total Amount of Phase I Tax Increment Revenues which are to be Received and Deposited in Fund for Benefit of Village and Other Taxing Districts</b>	<b><u>COLUMN 2</u></b> <b>Portions of Column 1 Amounts which are Subject to Disbursement to the Village</b>
1st Year of Payment	\$2,000,000	\$1,500,000
2nd	2,100,000	1,575,000
3rd	2,205,000	1,653,750
4th	2,315,250	1,736,438
5th	2,431,013	1,823,260
6th	3,000,000	2,250,000
7th	3,150,000	2,362,500
8th	3,307,500	2,480,625
9th	3,472,875	2,604,656
10th	3,646,519	2,734,889
11th	3,828,845	2,871,634
12th	4,020,287	3,015,215
13th	4,221,301	3,165,976
14th	4,432,366	3,324,275
15th	4,653,985	3,490,488
16th	4,886,684	3,665,013
17th	5,131,018	3,848,264
18th	5,387,569	4,040,677
19th	5,656,947	4,242,711
20th	5,939,795	4,454,846

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**EXHIBIT C**

**PHASE II**  
**ALLOCATED TAX INCREMENT REVENUE AMOUNTS**

<b><u>YEAR</u></b>	<b><u>PERCENTAGE OF PHASE II TAX INCREMENT REVENUES WHICH ARE TO BE PAID TO TAXING DISTRICTS</u></b>
1st year of payment	15
2nd	15
3rd	15
4th	15
5th	15
6th	20
7th	20
8th	20
9th	20
10th	20
11th	25
12th	25
13th	25
14th	25
15th	25
16th	30
17th	30
18th	30
19th	30
20th	30

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EXHIBIT D

LEGAL DESCRIPTION OF THE PHASE I SITE

That part of the Northeast 1/4 of Section 31, and that part of the Northwest 1/4 of Section 32, all in Township 42 North, Range 9 East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of said Section 32, thence Westerly along the Southline of the Northeast 1/4 of said Section 31, North 89 degrees 42 minutes 57 seconds West, a distance of 1,320.70 feet to a point on the West line of the East 1/2 of the Northeast 1/4 of said Section 31, said point being the point of beginning; thence Northerly along said West line, North 00 degrees 25 minutes 04 seconds East, a distance of 2,432.03 feet to a point on the Southwesterly line of Higgins Road (Route 72) as recorded per documents: No. 12079013, recorded November 8, 1937, No. 12284905, recorded March 20, 1939, No. 12309896, recorded May 10, 1939, and No. 12647599, recorded March 27, 1941, the following three courses:

- (1) A distance of 189.90 feet along an arc of a circle, convex to the Southwest, having a radius of 10,257.06 feet, and whose chord of 189.90 feet bears South 82 degrees 59 minutes 46 seconds East;
- (2) South 83 degrees 31 minutes 35 seconds East, a distance of 2,317.28 feet;
- (3) A distance of 1,239.98 feet along an arc of a circle, convex to the Northeast, having a radius of 9,965.07 feet, and whose chord of 1,239.18 feet bears South 79 degrees 57 minutes 42 seconds East;

Thence South 13 degrees 53 minutes 26 seconds West, 29.15 feet; thence Southerly along a curve tangent to the last described course, concave Easterly having a radius of 1,550.00 feet, an arc distance of 582.50 feet, and whose chord bears South 03 degrees 07 minutes 28 seconds West, a distance of 579.08 feet; thence South 07 degrees 38 minutes 30 seconds East, tangent to the last described course, a distance of 150.00 feet; thence Southwesterly along a curve concave Northwesterly having a radius of 1,350.00 feet, an arc distance of 2,402.00 feet, and whose chord bears South 43 degrees 19 minutes 50 seconds West, a distance of 2,097.46 feet; thence North 85 degrees 41 minutes 51 seconds West, tangent to the last described course, a distance of 150.00 feet; thence Northwesterly along a curve concave Northeasterly having a radius of 3,450.00 feet, an arc distance of 539.63 feet, and whose chord bears North 81 degrees 12 minutes 59 seconds West, a distance of 539.08 feet; thence North 76 degrees 44 minutes 08 seconds West, tangent to the last described course, a distance of 170.49 feet; thence Northwest-erly along a curve concave Southwesterly having a radius of 3,550.00 feet, an arc distance of 789.05 feet and whose chord bears North 83 degrees 06 minutes 11 seconds West, a distance of 787.43 feet; thence North 89 degrees 28 minutes 15 seconds West, a distance of 642.09 feet to a point on the West line of the East 1/2 of the Northeast 1/4 of aforementioned Section 31; thence Northerly along said West line, North 00 degrees 31 minutes 45 seconds East a distance of 116.16 feet to the point of beginning all in Cook County, Illinois. Containing 8,762,404 square feet (201.157 acres) of land, more or less.

**EXHIBIT E**

**LEGAL DESCRIPTION OF THE PHASE II SITE**

The Phase II Site is legally described as that certain real property legally described on Exhibit M as the Subject Property excepting therefrom that certain real property legally described on Exhibit D as the Phase I Site.

EXHIBIT F

LEGAL DESCRIPTION OF THE HOFFMAN ESTATES  
ECONOMIC DEVELOPMENT PROJECT AREA

That part of the East 1/2 of the East 1/2 of Section 31, lying South of the Northerly line of Higgins Road (S.R. 72) and North of the Southerly line of Section 31, and excluding property owned by the Northwest Tollroad; also that part of Section 32, lying South of the Northerly line of Higgins Road; North of the Southerly line of the Section 32 and excepting those portions of right-of-way (100' wide) belonging to E. J. & E. Railway (except the southerly 300' within the Northeast 1/4 of Section 32); and excluding property owned by the Northwest Tollway; also that part of the Southwest 1/4 of the Northwest 1/4 and the West 1/2 of the Southwest 1/4 of Section 33 lying south of the Northerly line of Higgins Road and North of the Southerly line of Section 33 except that portion of property owned by the Northwest Tollway; also the entire right-of-way of Beverly Road from the Northerly Line of Higgins Road to the Southerly Line of Section 31; also, that part of the east 1/2 of the Southwest 1/4 of Section 33 along with the Southeast 1/4 of the Northwest 1/4 of Section 33 lying south of the southerly line of Higgins Road right-of-way, except that portion of property owned by the Northwest Tollway, all of the above being in Township 42 North, Range 9, West of the Third Principal Meridian, in Cook County, Illinois. Also, that part of Section 4 lying Easterly of the Easterly right of way line of the Elgin, Joliet and Eastern Railroad Company and North of the Northerly Line of the Northern Illinois State Toll Highway Commission right of way, and that part of the West half of the West Half of Section 3, Township 41, North, Range 9, East of the Third Principal Meridian, lying North of the Northerly line of the Northern Illinois State Toll Highway Commission right of way, in Cook County, Illinois, and that part of the East half of the West half of fractional Section 3, lying North of the Northerly right of way line of the Northern Illinois State Toll Highway, excepting therefrom that part thereof conveyed to the Northern Illinois State Toll Highway Commission by instrument recorded May 13, 1957, as document 16902251 in Township 41 North, Range 9, East of the Third Principal Meridian, in Cook County, Illinois, and also except the following described parcels located in Township 42 North, Range 9, West of the Third Principal Meridian in Cook County, Illinois.

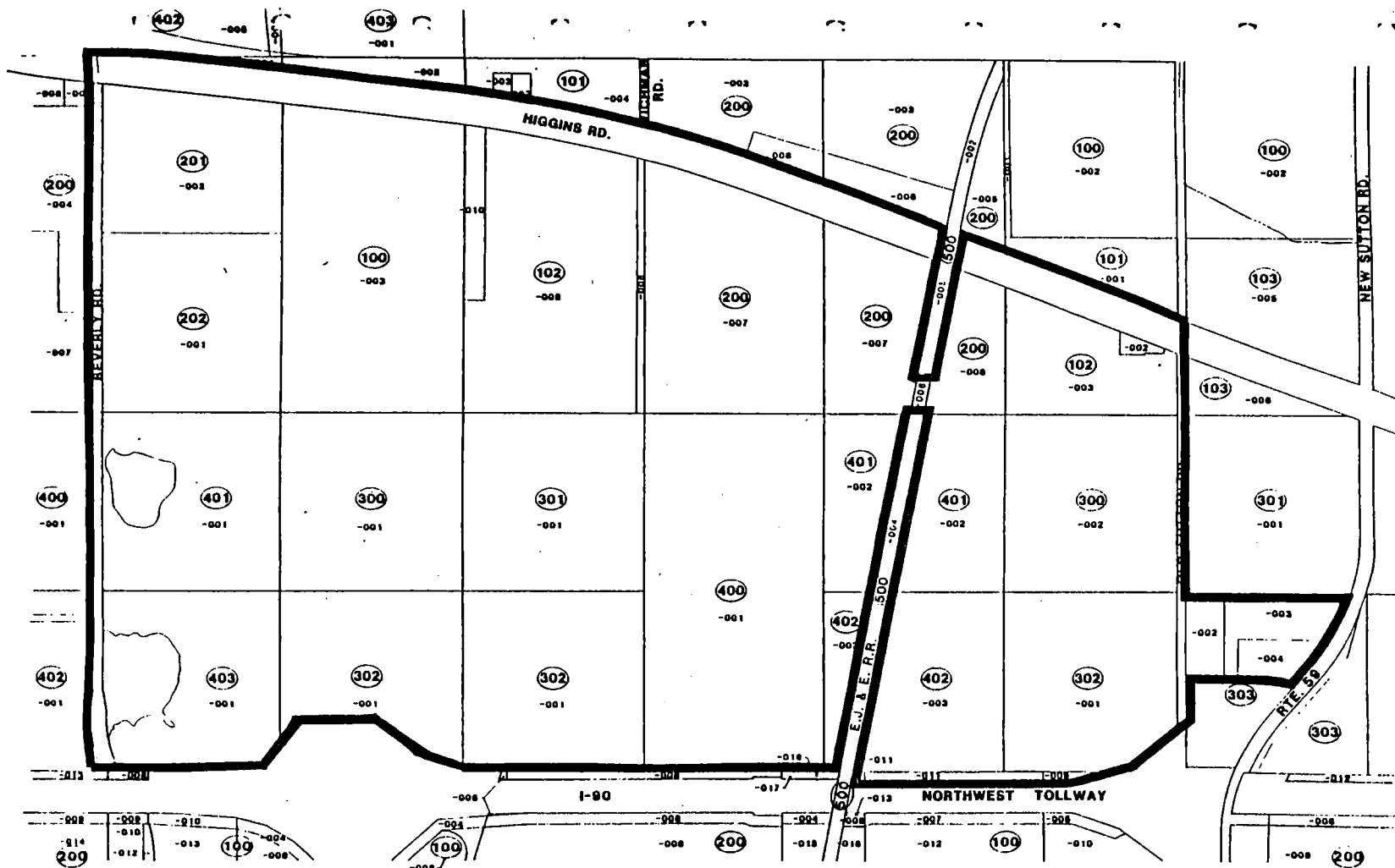
That part of the South 20.04 chains of the East 1/2 of the Southwest 1/4 of Section 33 lying South and East of the Northwesterly line of property owned by the Northwest Tollroad (Interstate 90) and lying south and East of New Sutton Road (S.R. 59);

Also that part of the Northeast 1/4 of the Southwest 1/4 of Section 33 lying West of the Westerly line of the New Sutton Road (S.R. 59) Right of Way;

Also that part of the Southeast 1/4 of the Northwest 1/4 of Section 33 lying South of the Southerly line of the Higgins Road (S.R. 72) Right of Way.

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**DEPICTION OF THE HOFFMAN ESTATES ECONOMIC  
DEVELOPMENT PROJECT AREA**

**EXHIBIT G**

**ECONOMIC DEVELOPMENT PROJECT BOUNDARY  
HOFFMAN ESTATES  
ECONOMIC DEVELOPMENT AREA**

VILLAGE OF HOFFMAN ESTATES

TESKA  
ASSOCIATES  
INC.



**EXHIBIT H**

**PHASE I DEVELOPMENT PUBLIC SITE IMPROVEMENTS**

The following is a description of the Phase I Development Public Site Improvements, as that term is used in the Agreement. The Phase I Development Public Site Improvements consist of those public streets, public utilities and other public site improvements which are constructed, or to be constructed, by, or under the direction of, the Developer, and all activities which are undertaken in connection with such construction: (i) within the Phase I Site; or (ii) outside the boundaries of the Phase I Site but within the Project Area and in connection with, or in furtherance of, the use, occupancy, and development of the Phase I Site; or (iii) outside the boundaries of the Project Area (to the extent such public streets, public utilities and public improvements are essential to the preparation of the Project Area in accordance with the Economic Development Plan). Natural gas, electric and telephone service shall not be included within the definition of "public utilities", as used above, except to the extent that they relate to natural gas, electric and telephone service improvements which are to be dedicated to, and owned by, the Village (e.g. public street lights).

The Phase I Site encompasses that portion of the Subject Property consisting of approximately two hundred (200) acres, which is located in the northwest corner of the Subject Property.

Specifically, the Phase I Development Public Site Improvements consist of the following:

**A. DEMOLITION**

Demolition and removal of existing structures within the Phase I Site and removal of all waste piles, underground storage tanks, if any, and similar conditions.

**B. EARTHWORK**

Earth-moving and grading within the Project Area to prepare for the construction and installation of the Phase I Development Public Site Improvements and construction of necessary storm water management improvements.

**C. WETLANDS MITIGATION**

Processing of necessary wetlands regulatory applications, satisfaction of all wetlands regulatory requirements, wetlands protection, and engineering and implementation of wetlands mitigation plans for the Subject Property.

**D. SANITARY SEWER**

Construction of necessary sanitary sewer mains and lines; lifts station and appurtenances; and acquisition of the easements and rights-of-way necessary to such construction. These improvements include, without limitation, essential trunk sewer mains from existing Metropolitan Water

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Reclamation District lines to the Project Area; sewer mains and lines through the Phase II Site and to the Phase I Site; and arterial sewer lines, and feeder lines from arterial sewer lines to structures, as required throughout the Phase I Site.

E. **WATER MAINS**

Construction of necessary potable water mains and lines and appurtenant facilities, and acquisition of the easements and rights-of-way necessary to such construction. This includes the construction of trunk mains located outside the Project Area that connect the Project Area to existing Village or Joint Area Water Association (JAWA) water mains; and the construction of arterial water lines through the Phase II Site, as necessary to connect the Subject Property to the existing municipal water system.

F. **ROADWAYS**

Construction of necessary roadways and ancillary roadway improvements and acquisition of the easements and right-of-ways necessary to such construction. These roadways and ancillary roadway improvements shall include the following (or their equivalents):

- (a) \*
- (b) \*
- (c) \*
- (d) \*

Construction of each of the foregoing roadway improvements may include, but shall not be limited to: (i) levelling and grading of earth; (ii) preparation of roadbed; (iii) paving; (iv) construction of curbs, sidewalks and gutters; (v) landscaping of medians and shoulders; (vi) installation of storm sewers; (vii) installation of street lighting; and (viii) installation of traffic signals.

G. **PIPELINE RELOCATION**

Relocation of existing pipeline(s) so as to permit construction of infrastructure and structures.

H. **INDIRECT COSTS**

Permit costs and fees related to the construction of all Phase I Development Public Site Improvements.

\* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

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**EXHIBIT I**

**PHASE II DEVELOPMENT PUBLIC SITE IMPROVEMENTS**

The following is a description of the Phase II Development Public Site Improvements, as that term is used in the Agreement. The Phase II Development Public Site Improvements consist of those public streets, public utilities and other public site improvements which are constructed, or to be constructed, by, or under the direction of, either the Village or the Developer, and all activities which are undertaken in connection with such construction: (i) within the Phase II Site; or (ii) outside the boundaries of the Phase II Site but within the Project Area and in connection with, or in furtherance of, the use, occupancy, and development of the Phase II Site; or (iii) outside the boundaries of the Project Area (to the extent such public streets, public utilities and public improvements are essential to the preparation of the Project Area for use in accordance with the Economic Development Plan). Natural gas, electric and telephone service shall not be included within the definition of "public utilities", as used above, except to the extent that they relate to natural gas, electric and telephone service improvements which are to be dedicated to, and owned by, the Village (e.g. public street lights).

The Phase II Site consists of the Subject Property, exclusive of the Phase I Site. The Phase II Site consists of approximately five hundred eighty-eight (588) acres and includes the PCMT Property.

Specifically, the Phase II Development Public Site Improvements consist of the following:

**A. DEMOLITION**

Demolition and removal of the remaining structures within the Project Area.

**B. EARTHWORK**

Earth-moving and grading within the Project Area to prepare for the construction and installation of the Phase II Development Public Site Improvements and construction of necessary storm water management improvements.

**C. SANITARY SEWER**

Construction of necessary sanitary sewer mains and lines, lift station and appurtenances, and acquisition of the easements and right-of-ways necessary to such construction. This includes, without limitation, construction of sanitary sewer mains and lines throughout the Phase II Site; construction of arterial lines from sanitary sewer trunk mains to structures located within the Phase II Site; and construction of all other sanitary sewer mains and lines, lift station and appurtenances that are essential to the preparation of the Project Area in accordance with the Economic Development Plan (except for those sewer mains and lines, lift stations and appurtenances constructed as Phase I Development Public Site Improvements).

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D. WATER MAINS

Construction of necessary potable water mains and lines and appurtenant facilities, and acquisition of the easements and rights-of-way necessary to such construction. This includes, without limitation, construction of feeder lines from arterial lines to structures located within the Phase II Site; and all other water mains and lines and other appurtenant facilities essential to the preparation of the Project Area in accordance with the Economic Development Plan (except for those water mains and lines and appurtenant facilities constructed as Phase I Development Public Site Improvements).

E. ROADWAYS

Construction of necessary roadways and ancillary roadway improvements and acquisition of the easements and rights-of-way necessary to such construction. These roadways and ancillary roadway improvements shall include the following (or their equivalents):

- (a) \*
- (b) \*
- (c) \*
- (d) \*
- (e) \*
- (f) \*
- (g) \*
- (h) \*
- (i) \*
- (j) \*

Construction of each of the foregoing roadway improvements may include, but shall not be limited to: (i) levelling and grading of earth; (ii) preparation of roadbed; (iii) paving; (iv) construction of curbs, sidewalks and gutters; (v) landscaping of medians and shoulders; (vi) installation of storm sewers; (vii) installation of street lighting; and (viii) installation of traffic signals.

F. INDIRECT COSTS

Permit costs and fees related to the construction of all Phase II Development Public Site Improvements.

\* Document on file. Confidentiality protected by Chapter 116, Section 207(s) of the Illinois Revised Statutes.

Exhibit "J"  
1 of 1

**PUBLIC WORKS AND IMPROVEMENTS**

The following is a list of Public Works and Improvements which are to be constructed, by or on behalf of the Village and all activities which are undertaken in connection with such construction, which are authorized by this Agreement and the Economic Development Plan which the Parties agree are reasonable or necessary. This Exhibit may be amended by the parties, from time to time, pursuant to the provisions of this Agreement.

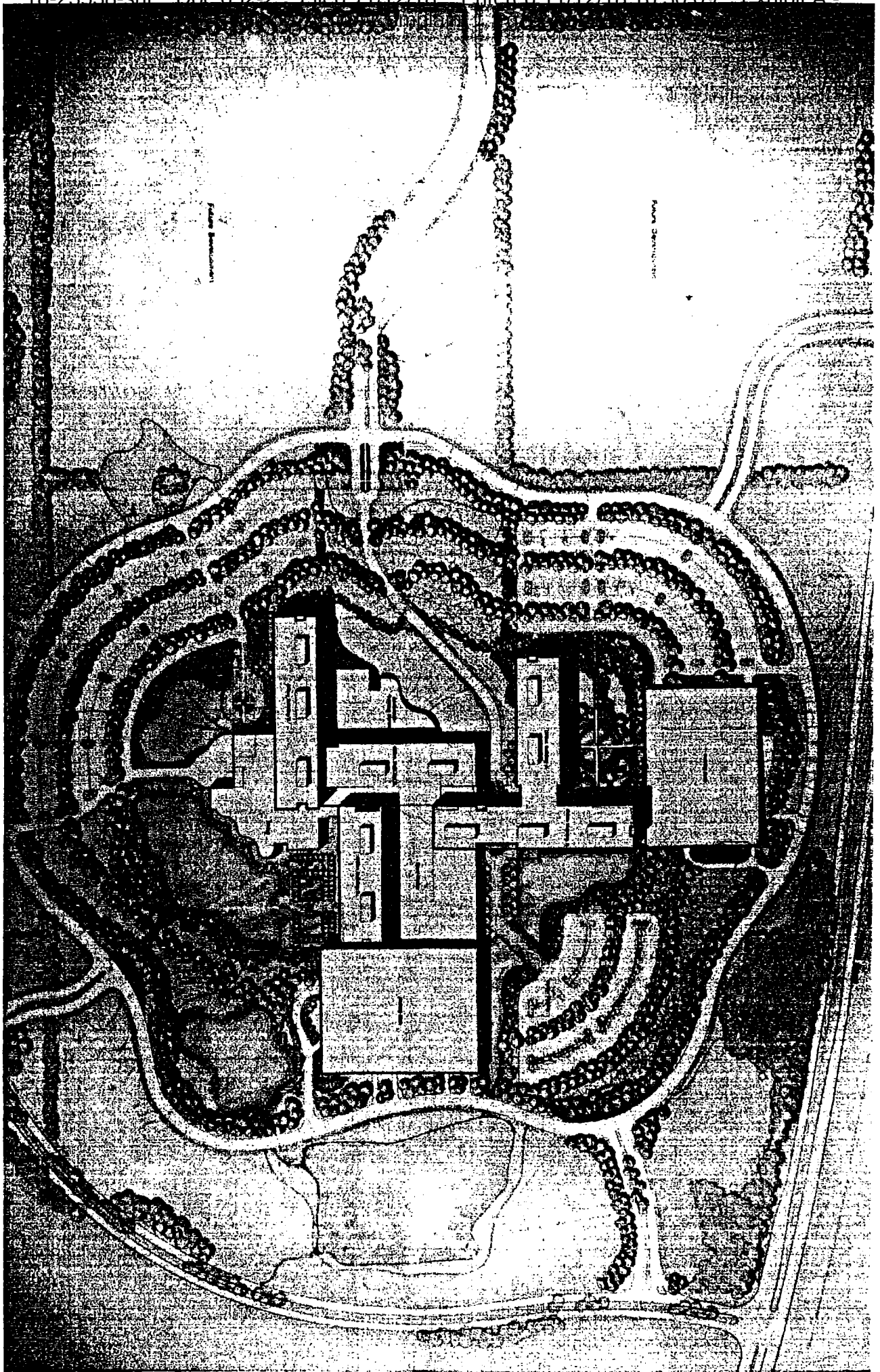
1. VILLAGE MUNICIPAL FACILITY
2. VILLAGE WATER TANK
3. INDIRECT COSTS

Fees related to the construction of Public Works and Improvements listed herein or as otherwise allowed by the provisions of this Agreement.

Exhibit J

FILED DATE: 10/10/2018 4:46 PM 2018CH12683

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**SMG OCCUPANCY DATE NOTICE**

Village of Hoffman Estates  
1200 North Gannon Drive  
Hoffman Estates, IL 60196  
Attn: Village Manager

Village of Hoffman Estates  
1200 North Gannon Drive  
Hoffman Estates, IL 60196  
Attn: Corporation Counsel

**Re: SMG Occupancy Date Notice Given Pursuant to  
Economic Development Agreement Dated By and Between  
the Village of Hoffman Estates and Sears, Roebuck  
and Co., ("Agreement")**

**Date:** \_\_\_\_\_

Ladies and Gentlemen:

This will confirm that Sears, Roebuck and Co., as Developer under the Agreement, has received the last governmental permit or approval necessary to its commencement of construction of the SMG Home Office Complex.

All terms not otherwise defined herein shall have the meanings given them in the Agreement.

**SEARS, ROEBUCK AND CO., a  
New York Corporation**

**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**CC: Senior Vice President - Sears/Resources and Administration  
General Counsel - Sears Merchandise Group  
Thomas Tully, Esq.  
J. Kevin Garvey, Esq.  
Harold W. Francke, Esq.**

Exhibit L

FILED DATE: 10/10/2018 4:46 PM 2018CH12683

EXHIBIT M

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THAT PART OF THE EAST  $\frac{1}{2}$  OF SECTION 31, AND THAT PART OF SECTION 32, AND THAT PART OF THE WEST  $\frac{1}{2}$  OF SECTION 33, ALL IN TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALSO THAT PART OF FRACTIONAL SECTION 3, AND FRACTIONAL SECTION 4, BOTH IN TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 32;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 32, NORTH  $89^{\circ}41'27''$  WEST, A DISTANCE OF 1343.48 FEET;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF TOLLWAY I-90 AS CONVEYED TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION, PER DOCUMENT NO. 17 400 695, RECORDED DECEMBER 10, 1958, THE FOLLOWING FIVE COURSES:

- (1) NORTH  $73^{\circ}44'44''$  WEST, A DISTANCE OF 291.20 FEET;
- (2) NORTH  $53^{\circ}26'13''$  WEST, A DISTANCE OF 372.02 FEET;
- (3) NORTH  $89^{\circ}41'27''$  WEST, A DISTANCE OF 550.00 FEET;
- (4) SOUTH  $54^{\circ}08'29''$  WEST, A DISTANCE OF 461.68 FEET;
- (5) SOUTH  $87^{\circ}54'36''$  WEST, A DISTANCE OF 612.13 FEET;

THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 31, NORTH  $89^{\circ}33'24''$  WEST, A DISTANCE OF 350.18 FEET;

THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF BEVERLY ROAD, AS RECORDED DECEMBER 18, 1956, PER DOCUMENT NO. 16 783 799, THE FOLLOWING FOUR COURSES:

- (1) NORTH  $19^{\circ}28'22''$  WEST, A DISTANCE OF 93.54 FEET;
- (2) A DISTANCE OF 379.80 FEET, ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 1087.92 FEET, AND WHOSE CHORD OF 377.87 FEET BEARS NORTH  $9^{\circ}28'19''$  WEST;
- (3) NORTH  $7^{\circ}32'23''$  WEST, A DISTANCE OF 178.10 FEET;
- (4) NORTH  $89^{\circ}28'14''$  WEST, A DISTANCE OF 33.00 FEET;

THENCE ALONG THE WEST LINE OF THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 31, NORTH  $0^{\circ}31'46''$  EAST, A DISTANCE OF 1997.96 FEET;

THENCE ALONG THE WEST LINE OF THE EAST  $\frac{1}{2}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SAID SECTION 31, NORTH  $0^{\circ}25'04''$  EAST, A DISTANCE OF 2432.02 FEET;

THENCE ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD (ROUTE 72), AS PER DOCUMENTS: NO. 12 079 013, RECORDED NOVEMBER 8, 1937, NO. 12 284 905, RECORDED MARCH 20, 1939, NO. 12 309 896, RECORDED MAY 10, 1939, NO. 12 647 599, RECORDED MARCH 27, 1941, AND NO. 12 288, RECORDED FEBRUARY 20, 1939, THE FOLLOWING FOUR COURSES:

- (1) A DISTANCE OF 189.90 FEET, ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 10,257.06 FEET, AND WHOSE CHORD OF 189.90 FEET BEARS SOUTH  $82^{\circ}59'46''$  EAST;
- (2) SOUTH  $83^{\circ}31'35''$  EAST, A DISTANCE OF 2317.28 FEET;
- (3) A DISTANCE OF 2532.01 FEET, ALONG AN ARC OF A CIRCLE, CONVEX TO THE NORTHEAST, HAVING A RADIUS OF 9965.06 FEET, AND WHOSE CHORD OF 2525.20 FEET BEARS SOUTH  $76^{\circ}14'50''$  EAST;
- (4) SOUTH  $68^{\circ}58'05''$  EAST, A DISTANCE OF 1233.00 FEET;

THENCE ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF ELGIN, JOLIET AND EASTERN RAILROAD, AS RECORDED JULY 1, 1889, PER DOCUMENT NO. 1 123 185, SOUTH  $11^{\circ}12'47''$  WEST, A DISTANCE OF 3844.25 FEET;  
THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST  $\frac{1}{4}$ , OF SAID SECTION 32, NORTH  $89^{\circ}42'33''$  WEST, A DISTANCE OF 1425.69 FEET TO THE POINT OF BEGINNING;

AND ALSO:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 32;  
THENCE ALONG THE SOUTH LINE OF THE SOUTHEAST  $\frac{1}{4}$  OF SAID SECTION 32, NORTH  $89^{\circ}42'33''$  WEST, A DISTANCE OF 1111.55 FEET TO THE POINT OF BEGINNING;

THENCE ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID ELGIN, JOLIET AND EASTERN RAILROAD, NORTH  $11^{\circ}12'47''$  EAST, A DISTANCE OF 3807.64 FEET;

THENCE ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD (ROUTE 72), SOUTH  $68^{\circ}58'05''$  EAST, A DISTANCE OF 1336.48 FEET;

THENCE SOUTH  $0^{\circ}07'09''$  WEST, A DISTANCE OF 178.58 FEET;

THENCE SOUTH  $89^{\circ}52'51''$  EAST, A DISTANCE OF 185.00 FEET;

THENCE NORTH  $0^{\circ}07'09''$  EAST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH  $89^{\circ}52'51''$  EAST, A DISTANCE OF 141.20 FEET;

THENCE NORTH  $01^{\circ}07'09''$  EAST, A DISTANCE OF 41.94 FEET;

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF HIGGINS ROAD, SOUTH  $68^{\circ}58'05''$  EAST, A DISTANCE OF 135.51 FEET;

THENCE AS MONUMENTED AND OCCUPIED, SOUTH  $0^{\circ}07'09''$  WEST, A DISTANCE OF 1769.21 FEET;

THENCE ALONG A LINE PARALLEL WITH, AND 1323.61 FEET NORTH OF THE SOUTH LINE, OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 33, SOUTH  $89^{\circ}44'52''$  EAST, A DISTANCE OF 1210.76 FEET;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 59 (NEW SUTTON ROAD), AS RECORDED AUGUST 30, 1934, PER DOCUMENT NO. 11 451 859, A DISTANCE OF 83.94 FEET ALONG AN ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 1458.06 FEET, AND WHOSE CHORD OF 83.93 FEET BEARS SOUTH  $18^{\circ}01'24''$  WEST;

THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF TOLLWAY I-90, RECORDED MAY 13, 1957 PER DOCUMENT NO. 16 902 251, AS MONUMENTED AND OCCUPIED, THE FOLLOWING TEN COURSES:

- (1) SOUTH  $32^{\circ}03'22''$  WEST, A DISTANCE OF 312.00 FEET;
- (2) SOUTH  $40^{\circ}38'44''$  WEST, A DISTANCE OF 517.39 FEET;
- (3) NORTH  $49^{\circ}12'41''$  WEST, A DISTANCE OF 70.00 FEET;
- (4) NORTH  $89^{\circ}52'22''$  WEST, A DISTANCE OF 635.00 FEET;
- (5) SOUTH  $0^{\circ}28'49''$  WEST, A DISTANCE OF 237.60 FEET;
- (6) SOUTH  $50^{\circ}39'29''$  WEST, A DISTANCE OF 501.20 FEET;
- (7) SOUTH  $74^{\circ}15'09''$  WEST, A DISTANCE OF 472.21 FEET;
- (8) NORTH  $89^{\circ}44'13''$  WEST, A DISTANCE OF 1513.85 FEET;
- (9) NORTH  $0^{\circ}23'47''$  EAST, A DISTANCE OF 15.00 FEET;
- (10) NORTH  $89^{\circ}44'13''$  WEST, A DISTANCE OF 81.60 FEET;

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF ELGIN, JOLIET AND EASTERN RAILROAD, NORTH  $11^{\circ}12'47''$  EAST, A DISTANCE OF 44.75 FEET, TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

**EXHIBIT N**

**CONTRACTS IN EXISTENCE OR TO BE LET BY THE DEVELOPER**<sup>1</sup>

**CONSULTANT**

**SCOPE OF WORK**

Barton-Aschman	Traffic Analysis and Consultation
Ludlow & Associates	Surveying
Tornrose Campbell	Civil Engineering (including civil engineering on Phase II Site which supports Phase I Development)
STS Consultants	Geotechnical Analysis
Hey & Associates	Environmental Studies
Schal Associates	Value Engineering
Donohue Associates <sup>2</sup>	Civil Engineering/Planning/Landscape (including civil engineering, planning and landscape on Phase II Site which supports Phase I Development)
Perkins & Will	Master Planning <sup>3</sup> 788 Acres
Homart Development Co.	Project Coordinator

- 1 The Village reserves the right to confirm that dollar amounts expended under contracts relate to property assembly costs, site preparation costs, and costs of construction of the Public Improvements, all as defined in the Act.
- 2 Includes subcontract to Johnson, Johnson & Roy.
- 3 Does not include costs for master planning of Phase I Site (200 acre), which costs are not deemed to be a "Project Cost".



**EXHIBIT O**

**PROPERTY ASSEMBLY COSTS PAID, INCURRED  
OR KNOWN AS OF THE DATE OF THIS AGREEMENT**

**I. CONSULTANT COSTS**

<b><u>CONSULTANT</u></b>	<b><u>SCOPE OF WORK</u><sup>1</sup></b>	<b><u>EDA COSTS</u><sup>2</sup></b>
Ludlow	ALTA Survey <sup>3</sup>	
Coldwell Banker		
Commercial	Brokerage	
Tornrose Campbell	Preliminary Civil	
STS Consultants	Preliminary Soils	*
Rudnick & Wolfe	Property Assemblage, Zoning, Environmental, Economic Development	
<b>Subtotal</b>		<b>\$1,550,000.00</b>

**II. PURCHASE PRICE**

	<b><u>EDA COSTS</u></b>
(1) Origer Estate	*
(2) Origer Children	
(3) Studz	
(4) Nederlander:	
73 acre parcel <sup>4</sup>	
148 acre parcel <sup>4</sup>	
(5) Watson <sup>5</sup>	
<b>Subtotal</b>	<b>\$87,368,618.00</b>

**III. TITLE AND SEARCHES<sup>3</sup>**

	<b><u>EDA COSTS</u><sup>2</sup></b>
(1) Origer Estate:	
(a) Title <sup>6</sup>	*
(b) Searches	
(2) Origer Children:	
(a) Title <sup>6</sup>	*
(b) Searches	
(3) Studz: Purchaser to receive a credit for:	
(a) Title <sup>6</sup>	*
(b) Searches	

\* Document on file. Confidentiality protected by Chapter 24, Section 207(s) of the Illinois Revised Statutes.

(4)	Nederlander; For both parcels:	
(a)	Title <sup>6</sup>	*
(b)	Searches	
(5)	Watson: <sup>5</sup>	
(a)	Title	*
(b)	Searches	
	Subtotal	\$40,000.00

IV. ESCROW CHARGES<sup>3</sup>

EDA COSTS<sup>2</sup>

(1)	Origer Estate and Origer Children	*
(2)	Nederlander	
(3)	Studz	
	Subtotal	\$5,000.00

- 1 Contracts are subject to execution of change orders.
- 2 Costs are estimated and are not intended to be final.
- 3 Subject to credits pursuant to Acquisition Contracts.
- 4 Provided the initial closing date is not extended. If the initial closing date is extended beyond June 29, 1990, Sears must deliver into the strict joint order escrow at Ticor Title Insurance Company an additional \$\_\_\_\_\_ per parcel, of which \$\_\_\_\_\_ per parcel will not be credited against the purchase price for each parcel.
- 5 Acquisition closed on September 7, 1989. All charges related to such closing have been paid in full.
- 6 This quote from Ticor Title Insurance Company is based on a title insurance premium of \$.40 per \$1,000.00 and a zoning 3.0 endorsement fee of \$.05 per \$1,000.00. No other endorsements are included in the quote, nor is the cost of reinsurance included.

\* Document on file. Confidentiality protected by Chapter 24, Section 207(s) of the Illinois Revised Statutes.

**EXHIBIT P**

**PROJECT COSTS PAID OR INCURRED BY THE DEVELOPER  
AS OF THE DATE OF THIS AGREEMENT IN CONNECTION WITH  
THE CONSTRUCTION OF THE PUBLIC SITE IMPROVEMENTS**

**I. PROJECT COSTS PAID OR INCURRED BY THE DEVELOPER**

<b><u>CONSULTANT</u></b>	<b><u>EDA COSTS</u><sup>1</sup></b>	<b><u>DESCRIPTION OF WORK</u></b>
<b><u>Planning</u></b>		
Barton-Aschman	\$278,332	Traffic impact analysis; roadway design
Perkins & Will	<u>244,152</u>	Site and master planning
Subtotal	<b><u>\$522,484</u></b>	
<b><u>Engineering</u></b>		
Ludlow & Associates	\$173,000	Surveying; topographic studies
STS Consultants	97,742	Geotechnical studies
Tornrose Campbell	65,328	Utility design
Hey & Associates	152,080	Environmental studies
Chicago Area Transport- ation Study	2,248	Traffic data
Subtotal	<b><u>\$490,398</u></b>	

- 1 Costs are not intended to be final; additional Project Costs are expected to be incurred.

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Mayor  
MICHAEL J. O'MALLEY  
Village Clerk  
VIRGINIA M. HAYTER  
Village Manager  
PETER T. BURCHARD

HOFFMAN



ESTATES

Board of Trustees  
BRUCE C. LIND  
WILLIAM D. McLEOD  
SUSAN H. KENLEY  
MICHAEL D. FRIESEN  
RICHARD A. COCHRAN  
LOUIS G. DESRUISSEUX

March 19, 1990

Mr. Michael Bozic  
Chairman and Chief Executive Officer  
Sears Merchandise Group  
Sears Tower  
Chicago, IL 60684

**Re: Letter of Clarification of Intent of Village Board Amendment of  
February 26, 1990 Prior to Approval of Economic Development  
Agreement By and Between The Village of Hoffman Estates and  
Sears, Roebuck and Co.**

Dear Mr. Bozic:

On February 26, 1990, the Village Board of the Village of Hoffman Estates approved, by Ordinance No. 2161-1990, the above referenced Economic Development Agreement. Prior to such approval, amendments to Sections 3.1-(e)-(2), 4.2(a) and 4.2(b) were made which stated that in regard to service contracts (Exhibit "N"), property assembly costs (Exhibit "O") and costs of construction activities (Exhibit "P"), that "both the Village and Sears agree that Chapman and Cutler as Bond Counsel for the Village, will determine what costs. . . qualify as Project costs under the Act".

In order to clarify the scope of such determination, please be advised that, after discussion with Corporation Counsel and the Board of Trustees, I can represent that the intent of such amendment was not to have Chapman and Cutler determine specific dollar amounts of expenditures or the reasonableness or necessity of any given expenditure. Rather, the Village's intent is to make Chapman and Cutler the party responsible for determining if the amounts payable under such service contracts, as well as the amount payable as "property

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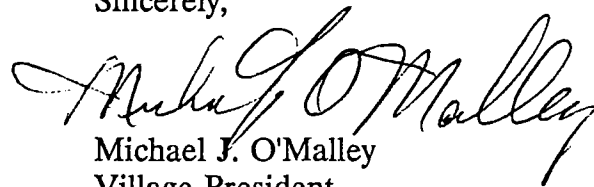
assembly costs", as "site preparation costs", and as costs of construction of the Public Improvements (as defined in the Agreement), qualify as "economic development project costs" under the State Statute referenced as the "Act" in the Agreement.

Specifically, with respect to Exhibit "N", it is understood that, to the extent service contracts relate to construction activities which do not constitute "site preparation costs" as that term is defined in the Act, or costs of construction of Public Improvements as that term is defined in the Agreement, then to such extent the costs incurred under such service contracts shall not be deemed to qualify under the Act and under the Agreement as a "Project Cost".

However, it remains the Village's intention to have the prorated share of the "qualified" portions of service contracts, property assembly costs, site preparation costs and costs of construction of the Public Improvements and to have the reasonableness or necessity of the "qualified" portions of service contracts, property assembly costs, site preparation costs and cost of construction of the Public Improvements determined under the provisions of Sections 4.3, 4.4 and 17.5 of the Agreement.

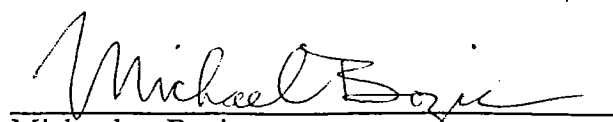
If this is your understanding and agreement, please sign one copy and return.

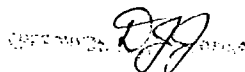
Sincerely,

  
Michael J. O'Malley  
Village President

MJO/ds

Understood and Agreed to:

  
Michael Bozic  
Chairman and Chief Executive Officer  
Sears Merchandise Group



FILED DATE: 10/10/2018 4:46 PM 2018CH12683

# CRAIN'S CHICAGO BUSINESS

June 12, 2017 07:00 PM

## With layoffs, Sears loses state tax credits

BRIGID SWEENEY  



Bloomberg

Sears' Hoffman Estates headquarters.

The 400 jobs being cut put the retailer below the employment threshold required for tax breaks—but Sears gets to keep the millions it has already received.

The announcement this morning that Sears Holdings has cut about 400 jobs, mostly at its Hoffman Estates headquarters, puts the company under the employment threshold required to receive the annual tax breaks it brokered in a 2011 deal with the state.

The deal, struck under the Edge program (short for Economic Development for a Growing Economy), provided Sears with state income tax credits worth \$15 million a year for 10 years. In order to keep the deal, Sears agreed to stop shopping for a new

**EXHIBIT**  
**2**

headquarters location out of state and to keep at least 4,250 local corporate jobs in Hoffman Estates.

"For the first time since our agreement was enacted in 2011, we recently dropped below the required retained job figure for the Edge credit," Sears spokesman Howard Riefs wrote in an email to Crain's. He said the company was allowed to count only certain types of jobs under the agreement.

A separate property tax agreement, reached at the same time, extended existing tax credits for 15 years, or until the company recovered \$125 million. That agreement also includes a 4,250 job requirement, but the definition of jobs that count is broader than the one within the Edge agreement. Sears remains in compliance with the property tax deal and will continue to receive those credits, according to spokesman Chris Brathwaite.

The retailer had a property tax break dating back to 1992, when it first moved to Hoffman Estates from the formerly namesake Loop skyscraper now named Willis Tower. That agreement was intended to reimburse Sears for the \$200 million it spent to build its suburban campus. Only about \$75 million was recaptured in property tax credits through 2011, according to Brathwaite. The extension was intended to pay back the remainder of Sears' investment.

At the time of the Edge and property tax deals in December 2011, Sears employed about 6,100 people at its headquarters, including full-time and contract workers. Brathwaite declines to provide the number currently employed at Sears headquarters. Though the number of Edge-qualifying employees is now below 4,250, that number does not include contractors, he said. Neither the Edge nor property tax deals count store-level Sears and Kmart employees in Illinois.

***Read more:***

- **Special Report: Sears—where America shopped**
- **With Sears' future in doubt, vendors begin pulling back**
- **Sears' media-shy CEO lashes out at suppliers**

Under the Edge deal, Sears was required to spend \$60 million in infrastructure investment by 2015 and \$100 million before 2018 to begin collecting credits. The credits are paid two years in arrears. Sears met those requirements and first collected about \$20 million in tax credits in 2016 for the 2014 calendar year. It is currently collecting credits for meeting conditions in 2015. Sears also met conditions in 2016, he said, which means it would be paid out next year.

In the last five years, Brathwaite said, Sears has paid more than \$680 million in taxes, invested more than \$260 million in its headquarters campus and worked with thousands of vendors across the state.

The state's Department of Commerce & Economic Opportunity, which oversees the Edge agreement, confirmed that Sears will fall below the minimum number of employees required to receive the credits.

"The department is planning a books and records examination to ensure taxpayers are not on the hook for an out-of-compliance Edge agreement," spokeswoman Jacquelyn Reineke wrote in an email.

Sears is one of eight companies that received so-called "special" Edge agreements through a program amendment filed in 2011. CME Group also received one around the same time as Sears. Mitsubishi, which closed its plant in Normal in 2015 and no longer operates in Illinois, received another.

Unlike regular Edge agreements, tax credits already issued under special Edge deals cannot be clawed back if a company falls out of compliance, Reineke said.

Gov. Bruce Rauner has worked to add taxpayer protections to the Edge program, she added.

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**Source URL:** <https://www.chicagobusiness.com/article/20170613/NEWS07/170619964/with-layoffs-sears-loses-edge-tax-credits>



**SETTLEMENT AGREEMENT REGARDING EDGE TAX CREDIT AGREEMENT**

**THIS SETTLEMENT AGREEMENT REGARDING EDGE TAX CREDIT AGREEMENT** (the "Settlement Agreement") is entered into as of this 15th day of December, 2017 by and between the State of Illinois, acting by and through its Department of Commerce and Economic Opportunity (the "Department") and Sears Holdings Management Corporation ("Sears Holdings"), together with its other direct and indirect subsidiaries that now or hereafter exist (collectively, the "Company"), and together with the Department, the "Parties."

**RECITALS**

A. The Department and the Company entered into the EDGE Tax Credit Agreement dated October 26, 2012 (the "Original Agreement") and the First Amendment to the EDGE Tax Credit Agreement dated June 14, 2017 (the "First Amendment"; the Original Agreement and the First Amendment are hereafter referred to as the "Agreement"), wherein the Department agreed to award an EDGE tax credit to the Company pursuant to Public Act 91-476, titled the Economic Development for a Growing Economy ("EDGE") Tax Credit Act, 35 ILCS 10/5-1, *et seq.*, subject to the terms and conditions set forth therein.

B. The Agreement required the Company to, among other things, retain a minimum of 4,250 Full-Time Employees at certain specified locations as set forth in the Agreement.

C. On March 15, 2017, the Company submitted its request for the Certificate of Verification for Taxable Year 2016.

D. On May 31, 2017, the number of Retained Employees fell below 4,250, and as of the date of this Settlement Agreement the number of Retained Employees remains below 4,250.

E. To resolve and settle certain disputes that arose between the Parties regarding issuance of the Certificates of Verification for Taxable Year 2016 and Fiscal Year 2017, the Department and the Company desire to enter into this Settlement Agreement.

F. As used herein, the below terms have the following meanings:

- a. "Settlement Agreement" refers to the agreement herein entered into by the Parties on this 15th day of December, 2017.
- b. "Fiscal Year 2017" means the Company's fiscal year ending January 31, 2018.
- c. "Certified" refers to issuance by the Department of a Certificate of Verification for a given Taxable Year.
- d. Capitalized terms used herein but not defined shall have the respective meanings ascribed to them in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged and agreed to, the Parties hereto agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Settlement Agreement.

2. Issuance of Certificate of Verification for Taxable Year 2016: Use of Credits. Concurrently with the execution of this Settlement Agreement, the Department shall issue the Certificate of Verification for Taxable Year 2016 to the Company. Notwithstanding the provisions of Section 2E of the Agreement, the Company may use the Credits issued and carryforward any Unused Credits Certified and unused as of the date of this Settlement Agreement even though the number of Retained Employees remains below 4,250, so long as the Company uses any such Unused Credits by September 30, 2019. After October 1, 2019, the Company may not claim any Unused Credits against its obligation to pay over withholding under Section 704A of the Illinois Income Tax Act unless, and until, the Company comes back into compliance with the terms and conditions of the Agreement as set forth in Section 2E.

3. Certificate of Verification for Fiscal Year 2017. The Department shall have no obligation to issue any Certificate of Verification for Fiscal Year 2017. The Company expressly waives and agrees to not seek any Certificate of Verification or other Credit for Fiscal Year 2017.

4. Release of Claims for Taxable Year 2016 and Fiscal Year 2017. As the purpose of this Settlement Agreement is to resolve certain disputes that arose between the Parties regarding issuance of the Certificates of Verification and use of Credits for Taxable Year 2016 and Fiscal Year 2017, the Company hereby releases the Department from all causes of action, claims or demands, whether known or unknown, with respect to issuance of the Certificates of Verification and use of Credits for Taxable Year 2016 and Fiscal Year 2017.

5. Authority to Bind. The Company hereby represents and warrants as of the date hereof: (a) this Settlement Agreement has been duly authorized, executed and delivered by the Company and is the legal, valid and binding obligation of the Company enforceable in accordance with its terms; (b) the Company has full power and authority to execute, deliver and perform the Agreement, as agreed to hereby, and any ancillary documents and to perform its obligations thereunder, and to consummate the transactions contemplated hereby; and (c) the execution and delivery of this Settlement Agreement and any ancillary documents, the performance by the Company of its obligations under the Agreement, as agreed to hereby, and the consummation by the Company of the transactions contemplated by the Agreement, as agreed to hereby, will not: (i) contravene any provision of the articles of incorporation or bylaws of the Company; (ii) violate or conflict with any law, statute, ordinance, rule, regulation, decree, writ, injunction, judgment or court order of any governmental body or of any arbitration award which is either applicable to, binding upon or enforceable against the Company; (iii) conflict with, result in any breach of, or constitute a default (or an event which would, with the passage

of time or the giving of notice or both, constitute a default) under any other agreement which is applicable to, binding upon or enforceable against the Company; or (iv) require the consent, approval, authorization or permit of, or filing with or notification to, any governmental body, any court or tribunal or any other Person. The signatory for the Company represents that he or she has been duly authorized to execute this Settlement Agreement on behalf of the Company.

6. No Other Amendment; Conflicts. Except as otherwise expressly agreed to hereby, the Agreement shall remain unmodified and in full force and effect. In the event of any conflicts between the Agreement and this Settlement Agreement, this Settlement Agreement shall control.

7. No Construction Bias. Each of the Parties hereto cooperated in the drafting and preparation of this Settlement Agreement. Hence, this Settlement Agreement shall not be construed as an admission of liability, wrongdoing or responsibility by any party.

8. Binding Upon Successors and Assigns. This Settlement Agreement, and all representations, agreements, covenants and releases set forth herein, shall be binding upon, and shall inure to the benefit of, the Parties and their respective predecessors, successors, heirs and assigns.

9. Partial Invalidity. In the event that any provisions of this Settlement Agreement should be held to be void or unenforceable, the remaining portions hereof shall remain in full force and effect.

10. Governing Law. This Settlement Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules and suit, if any, must be brought in the State of Illinois.

11. Counterparts. This Settlement Agreement may be executed in counterparts, it being understood that all such counterparts, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Settlement Agreement on the date set forth above.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

[Signature Page to Settlement Agreement to EDGE Tax Credit Agreement]

**SEARS HOLDINGS MANAGEMENT  
CORPORATION, a Delaware corporation**

**THE STATE OF ILLINOIS, ACTING  
BY AND THROUGH ITS  
DEPARTMENT OF COMMERCE AND  
ECONOMIC OPPORTUNITY**

By:  (1)(b)

Its: General Counsel

Date: 12/15/17

 (1)(b)

By.

Its: Director

Date: 12/15/17

## SEARS HOLDINGS

Jonathan Bredemeier  
Sr. Director, Real Estate and Corporate  
Services

Sears Holdings Management Corporation  
3333 Beverly Road BC-154A  
Hoffman Estates, IL 60179  
(847) 286-8358  
Fax (847) 286-3470  
Email Jon.Bredemeier@searshc.com

November 27, 2017

James H. Norris  
Village Manager  
Village of Hoffman Estates  
1900 Hassell Road  
Hoffman Estates, IL 60169

Re: EDA Distribution

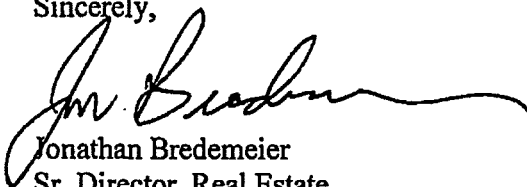
Dear Mr. Norris:

Thank you for your letter dated November 7, 2017 regarding the EDA distribution for 2017. Please be advised that, pursuant to Public Act 097-0636, as of the date of this letter, over 4250 jobs exist at the Sears Holdings' campus in Hoffman Estates. Please be further advised that at no time in 2017 did the number of jobs dip below the requisite 4250 jobs.

Sears Holdings appreciates the ongoing relationship we enjoy with the Village of Hoffman Estates and the surrounding community. As one of the State's largest employers and taxpayers, we are proud of the positive impact we have had on the area for more than two decades: hundreds of millions in infrastructure development dollars have been invested plus thousands of direct jobs (thousands more ancillary jobs) have been created and maintained.

Should you have any further questions, please do not hesitate to ask.

Sincerely,



Jonathan Bredemeier  
Sr. Director, Real Estate  
and Corporate Services

cc: Jason Pollak, Assistant General Counsel  
Arthur Janura, Corporation Counsel

**EXHIBIT**

**4**

## RETAIL

APPAREL | DISCOUNTERS | DEPARTMENT STORES | E-COMMERCE | FOOD AND BEVERAGE | RESTAURANTS | HOUSEHOLD PRODUCTS

# Sears lays off 220 employees at corporate offices

- Sears is laying off 220 employees primarily at the company's corporate headquarters.



BUSINESS NEWS



CNBC TV



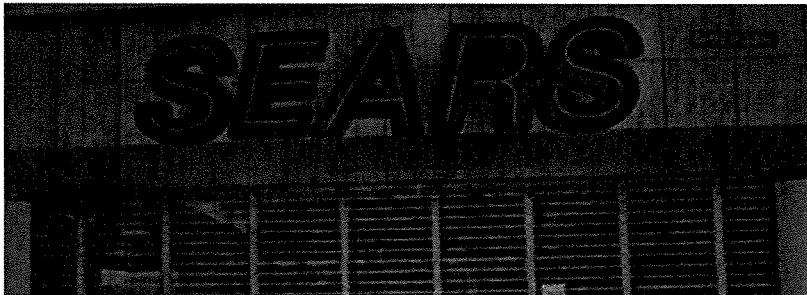
MENU

The moves are part of the department store chain's ongoing restructuring plan.

### BREAKING NEWS

Lauren Thomas | Lauren Hirsch

Published 2:56 PM ET Wed, 31 Jan 2018 | Updr 8 PM ET Wed, 31 Jan 2018



## Sears lays off 220 employees at corporate offices

6:14 PM ET Wed, 31 Jan 2018 | 00:42

Sears Holdings on Wednesday laid off 220 employees primarily at the company's corporate headquarters in Hoffman Estates, Illinois, effective immediately.

The job cuts impacted various business units and roles across the retail organization, a spokesman told CNBC. The moves are part of the department store chain's ongoing restructuring plan, announced earlier this month, to streamline operations and get back to profitability.

"The company continues to achieve significant progress in our restructuring program, with actions taken in fiscal year 2017 to

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**EXHIBIT**  
**5**

realize \$1.25 billion in annualized cost savings," the spokesman said.

Earlier this month, the retailer also outlined its plans to shutter more than 100 locations under the Sears and Kmart banners, impacting hundreds of other part-time positions as those stores go dark.

The company has said it will offer severance and transition assistance to those employees who are eligible. It wasn't immediately clear how many people still work at Sears' corporate headquarters, and the company declined to comment.

Coming off a disappointing holiday season, Sears is looking for ways to drive sales and is considering further monetizing some of its other assets, including the Kenmore and DieHard brands, and Sears Home Services.

Why you should buy a used car—and pay a lot less money than you think

The Kavanaugh decision might have cost businesses \$9 billion — so far

Elon Musk asks this tricky interview question that most people can't answer

You should feel dumb if you're not getting this interest rate on your savings account, expert says

If you're married and near retirement, consider this tax-saving strategy

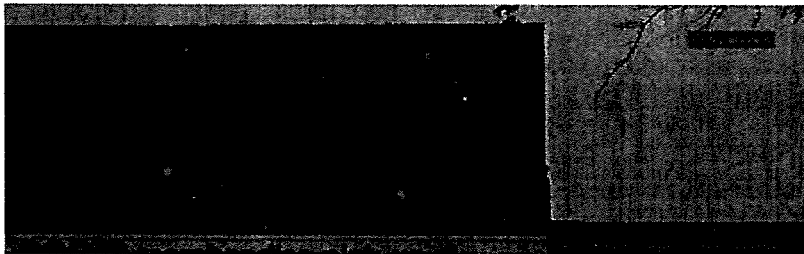
Mattress Firm is the latest retailer to go bankrupt. Here are others that went bust this year.



#### BREAKING NEWS

efforts fail

consider 'all options' if refinancing



### Sears warns it will consider 'all options' if efforts to refinance \$1 billion fail

11:05 AM ET Wed, 10 Jan 2018 | 01:06



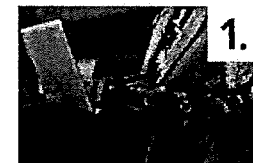
Lauren Thomas  
Retail Reporter

Lauren Hirsch  
Retail Reporter for CNBC.com

#### RELATED SECURITIES

Symbol	Price	Change	%Change
SHLD	0.5851 ▼	-0.0373	-5.99%

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3. Elon Musk asks this tricky interview question that most people can't answer



4. Voter registrations skyrocket after Taylor Swift's get-out-the-vote push

Listen to the IMF's new warning,



LAW  
OFFICE  
OF

Kory Atkinson

236 West Lake Street, Suite 100  
Bloomington, IL 60108

P: 630.980.9100  
F: 630.980.9120

kaa@koryatkinson.com  
www.koryatkinson.com

July 30, 2018

Jonathan Bredemeier  
Senior Director, Real Estate and Corporate Services  
Sears Holdings Management Corporation  
3333 Beverly Road, BC-154A  
Hoffman Estates, IL 60179

**RE: Economic Development Area  
Sears Headquarters Campus Job Count**

Dear Mr. Bredemeier:

I am an attorney for Community Unit School District 300. Pursuant to the Illinois Economic Development Area Tax Increment Allocation Act (20 ILCS 620/1 *et seq.*) (the "Act"), Sears Holdings Management Corporation (Sears) annually informs the Village of Hoffman Estates as to the number of jobs maintained at the Sears headquarters campus in Hoffman Estates. Under the Act, Sears is required to maintain at least 4,250 jobs at the campus in order to qualify to receive millions of dollars in property tax proceeds generated by the Economic Development Area ("EDA").

Media reports over the past year have raised legitimate concern as to the number of jobs maintained in the EDA. Such reports suggest that Sears may no longer qualify for Economic Development for a Growing Economic (EDGE) tax credits because it no longer has 4,250 employees at the headquarters campus. Media reports following Sears' most recent announcement that it is again cutting hundreds of jobs at its headquarters indicated that a Sears' spokesperson declined to say how many jobs are now at the Sears headquarters campus.

School District 300 is understandably concerned about the proper administration of the EDA. Millions of property tax dollars are diverted from the school district and other local governments based on the promise that Sears will maintain 4,250 jobs at its headquarters. In light of the ongoing media coverage, School District 300 requests that Sears provide corroborating evidence to support its assertion that it maintained 4,250 jobs during calendar year 2017. In addition, the school district asks for a commitment from Sears that it will provide corroborating evidence in support of any assertion as to the number of jobs maintained during 2018 prior to any distribution of funds under the EDA for 2018.

School District 300 welcomes open communication with Sears about the administration of the EDA. Clarification and corroboration on whether and how Sears is maintaining the requisite 4,250 jobs in the face of continuing layoffs is a critical concern for the school district.

**EXHIBIT**  
**6**

FILED DATE: 10/10/2018 4:46 PM 2018CH12683



LAW  
OFFICE  
OF

Kory Atkinson

236 West Lake Street, Suite 100  
Bloomington, IL 60108

P: 630.980.9100  
F: 630.980.9120

kaa@koryatkinson.com  
www.koryatkinson.com

Jonathan Bredemeier  
Sears Holdings Management Corporation  
July 30, 2018  
Page 2

I appreciate your prompt attention and response to this letter.

Sincerely,



Kory A. Atkinson

cc: Jason Pollak, Assistant General Counsel, Sears Holdings Management Corporation  
Arthur Janura, Corporation Counsel, Village of Hoffman Estates  
Fred Heid, Superintendent, Community Unit School District 300  
Susan Harkin, Chief Operating Officer/CSBO, Community Unit School District 300

FILED DATE: 10/10/2018 4:46 PM 2018CH12683



NEAL GERBER EISENBERG

August 24, 2018

David S. Martin  
Attorney at Law

Tel 312.269.8011  
Fax 312.578.1544  
dmartin@nge.com

Via Email and US Mail

Mr. Kory Atkinson  
236 West Lake Street, Suite 100  
Bloomington, Illinois 60108

Re: Sears Property Tax

Dear Kory:

Thank you for your email that attached your letter to Jonathan Bredemeier. Regarding whether Sears would reconsider and accept notes in lieu of a tax refund the answer is no. I assume School District 300 is aware that its appraisal and expert opinion supports a refund of about \$4,600,000 for each of the pending PTAB appeals 2013 through 2015. Sears expert opines a value that would generate a refund of about \$8,400,000 for each of the 3 years. Sears is open to a set off for property tax deemed illegal by a settlement, which it has previously received pursuant to an annual increment allocation. Sears is also open to discussing refunds being paid incrementally. However, if settlement is not reached refunds would be paid in full at one time and it is presumed that based on the parties expert opinions the refund amount would be between \$4,600,000 and \$8,400,000 for each year.

Regarding the letter to Jonathan Bredemeier that was attached to your email, I offer the following observations.

- First, any issue relating to the number of jobs maintained within the EDA are unrelated to the property tax appeals pending at the PTAB. These 2 matters are wholly independent of each other and will be treated as such by Sears.
- Secondly, Sears has no obligation to provide School District 300 with any information regarding "jobs" within the EDA. Sears has not provided this information to School District 300 in the past and sees no reason to begin doing so now.

I look forward to further discussions relating to the pending PTAB appeals.

Very truly yours,

David S. Martin

DSM:kb  
014311.0002:28253491.2

**EXHIBIT**

**7**

FILED DATE: 10/10/2018 4:46 PM 2018CH12683

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COOK COUNTY, IL  
2018CH12683

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2320 - Served By Mail  
2420 - Served By Publication  
Summons - Alias Summons

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2321 - Served By Mail  
2421 - Served By Publication

(08/01/18) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Community Unit School District 300

(Name all parties)

v.

Village of Hoffman Estates

2018CH12683

Case No.

☒ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance and pay the required fee **within thirty (30) days after service of this Summons**, not counting the day of service. To file your answer or appearance you need access to the internet. Please visit [www.cookcountyclerkofcourt.org](http://www.cookcountyclerkofcourt.org) to initiate this process. Kiosks with internet access are available at all Clerk's Office locations. Please refer to the last page of this document for location information.

**If you fail to do so, a judgment by default may be entered against you for the relief requested in the complaint.**

To the Officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois  
[cookcountyclerkofcourt.org](http://cookcountyclerkofcourt.org)

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E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>, or talk with your local circuit clerk's office.

Atty. No.: 91219

Witness: 10/10/2018 4:46 PM DOROTHY BROWN

Atty Name: Kenneth M. Florey

Atty. for: Community Unit School District 300

Address: 631 E. Boughton Road, Suite 200

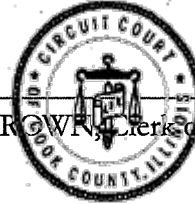
City: Bolingbrook

State: IL Zip: 60440

Telephone: 630.929.3639

Primary Email: kflorey@robbins-schwartz.com

DOROTHY BROWN, Clerk of Court



Date of Service: \_\_\_\_\_  
(To be inserted by officer on copy left with  
Defendant or other person):

## CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

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50 W Washington  
Chicago, IL 60602

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Skokie, IL 60077

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Rolling Meadows, IL 60008

District 4 - Maywood  
1500 Maybrook Ave  
Maywood, IL 60153

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10220 S 76th Ave  
Bridgeview, IL 60455

District 6 - Markham  
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(08/01/18) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Community Unit School District 300

(Name all parties)

v.

Sears Holdings Corporation

Case No. 2018CH12683

☒ SUMMONS    ☐ ALIAS SUMMONS

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Atty. No.: 91219

Witness: 10/10/2018 4:46 PM DOROTHY BROWN

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Atty. for: Community Unit School District 300

Address: 631 E. Boughton Road, Suite 200

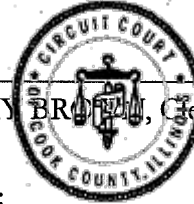
City: Bolingbrook

State: IL Zip: 60440

Telephone: 630.929.3639

Primary Email: kflorey@robbins-schwartz.com

DOROTHY BROWN, Clerk of Court



Date of Service: \_\_\_\_\_  
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Defendant or other person):

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

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COOK COUNTY, IL  
2018CH12683

COMMUNITY UNIT SCHOOL DISTRICT 300

Plaintiff

v.

VILLAGE OF HOFFMAN ESTATES and SEARS HOLDING CORPORATION

Defendant

2018CH12683

No. \_\_\_\_\_

CHANCERY DIVISION CIVIL COVER SHEET  
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

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0001 ☐ Class Action  
0002 ☒ Declaratory Judgment  
0004 ☒ Injunction

0007 ☐ General Chancery  
0010 ☐ Accounting  
0011 ☐ Arbitration  
0012 ☐ Certiorari  
0013 ☐ Dissolution of Corporation  
0014 ☐ Dissolution of Partnership  
0015 ☐ Equitable Lien  
0016 ☐ Interpleader  
0017 ☐ Mandamus  
0018 ☐ Ne Exeat

0019 ☐ Partition  
0020 ☐ Quiet Title  
0021 ☐ Quo Warranto  
0022 ☐ Redemption Rights  
0023 ☐ Reformation of a Contract  
0024 ☐ Rescission of a Contract  
0025 ☐ Specific Performance  
0026 ☐ Trust Construction  
☐ Other (specify) \_\_\_\_\_

By: Kenneth M. Florey

☒ Atty. No.: 91219 ☐ Pro se 99500

Name: Kenneth M. Florey

Atty. for: Community Unit School District 300

Address: 631 E. Boughton Rd, Suite 200

City/State/Zip: Bolingbrook, IL 60440

Telephone: 630.929.3639

Primary Email: kflorey@robbins-schwartz.com

Secondary Email: jmillier@robbins-schwartz.com

Tertiary Email: \_\_\_\_\_

**Pro Se Only:** ☐ I have read and agree to the terms of the **Clerk's Office Electronic Notice Policy** and choose to opt in to electronic notice from the **Clerk's Office** for this case at this Email address: \_\_\_\_\_